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Security Council

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Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

Note verbale dated 16 October 2003 from the Permanent Mission of Viet Nam to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of the Socialist Republic of Viet Nam to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999), and with reference to the latter's letter, has the honour to submit the updated report requested (see annex).

03-57323 (E) 271003

Annex to the note verbale dated 16 October 2003 from the Permanent Mission of Viet Nam to the United Nations addressed to the Chairman of the Committee

THE SOCIALIST REPUBLIC OF VIETNAM

REPORT

SUBMITTED TO THE COMMITTEE ESTABLISHED UNDER RESOLUTION 1267 (1999) OF THE UNITED NATIONS SECURITY COUNCIL PURSUANT TO PARAGRAPHS 6 AND 12 OF RESOLUTION 1455 (2003) OF THE SECURITY COUNCIL

I. INTRODUCTION

1. Vietnam strongly condemns all terrorist acts in any form and under any motive and holds that anti-terrorism measures must be carried out in accordance with the principles of sovereignty, territorial integrity and the United Nations Charter.

Vietnam is resolutely opposed to any conspiration and any act aimed at interfering into internal affairs of sovereign states and causing sufferings to innocent civilians under the pretext of combating terrorism.

Vietnam is of the view that terrorism can only be eliminated by thoroughly addressing all its underlying causes, among which poverty and development gaps are the main ones.

Vietnam is fully aware of the potential threat posed by terrorists and terrorist organizations to the region as well as of its adverse impact upon the stability, security and development of Vietnam.

Following the cooperative activities with the 1267 Committee pursuant to paragraph 4 (b) of Resolution 1267 (1999), paragraph 8 (c) of Resolution 1333 (2000) and paragraphs 1 and 2 of Resolution 1390 (2002), Vietnam has carefully studied the Guidance attached to the Note No. SCA/2/03 (03) dated 04 March 2003 in order to continue effective cooperation on this matter.

Accordingly, up to now, the competent authorities of Vietnam have not found in its territory either activities of Usama bin Laden, Al-Qaida, Taliban and associated individuals and entities or any threat

they could pose to Vietnam. Vietnam, however, always heightens her awareness of these individuals and entities. Over the past time, there existed some Vietnamese terrorist groups in the United States (such as the so-called Revolutionary Government of Free Vietnam led by Nguyen Huu Chanh) who committed terrorist acts by bombing, threatening lives and properties of Vietnam's Representative Offices in Thailand and Philippine. Besides, Chanh's group had intended to terrorize by bombing some areas in Vietnam but Vietnam's authorities timely found out his intention so that individuals who had entered Vietnam to carry out such terrorist acts were arrested. Vietnam's authorities continue its investigation to clarify if this group is associated with terrorist organizations of Al-Qaida and Taliban.

II. CONSOLIDATED LIST

2. Measures to incorporate the 1267 Committee's List (hereinafter mentioned as "the List") in Vietnam's legal system and administrative structure:

2.1. Up to now, Vietnam has not enacted any specific legal document on the entities and individuals in the List. This is a new issue in the legislative practices of Vietnam. Vietnamese laws provide appropriate measures against general subject matters without mentioning specific entities or individuals.

2.2. However, the competent authorities of Vietnam (Ministry of Defense, Ministry of Public Security, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Finance and State Bank of Vietnam etc.) are informed in full and on time of the List. The updated List Vietnam received from the 1267 Committee (every three months) will certainly continue to be circulated to these authorities. The Vietnamese Government is taking appropriate measures to put the individuals and entities in the 1267 Committee's List under examination, financial supervision, customs and immigration control. Particularly, these individuals will be included in the List of persons who are prohibited from entering into Vietnam.

3. Problems in clarifying the names and identifying information included in the List:

Currently, the List, by and large, has provided only the names of individuals without photos or other identifying information. Vietnam's

authorities, therefore, find it difficult to examine, detect and prevent the entries of these individuals into Vietnam's territory.

4. The competent authorities of Vietnam have not found out in its territory the presence of any individual or entity included in the List.

5. The competent authorities of Vietnam have not found out any individual or entity associated with Usama Bin Laden or members of the Taliban or Al-Qaida that have not been included in the List.

6. No individual or entity included in the List has engaged in any legal proceedings against Vietnam's authorities for inclusion in the List.

7. The competent authorities of Vietnam have not identified any individuals included in the List as nationals or residents of Vietnam. So far, the competent authorities of Vietnam do not have any information relating to any the individual who is not already included in the List. Vietnam will continue to scrutinize and provide the above-mentioned information, if any, to the 1267 Committee.

8. The competent authorities of Vietnam have not detected any case of recruiting or supporting members of Al-Qaida in carrying out activities in Vietnam's territory. There is no Al-Qaida training camps established in Vietnam's territory.

III. FINANCIAL AND ECONOMIC ASSETS FREEZE

9. Domestic legal basis to implement the asset freeze as required by relevant resolutions of the UN Security Council; impediments under domestic law in this context and steps taken to address them:

9.1. The most important legal basis for Vietnam to implement the asset freeze as required by the relevant resolutions of the UN Security Council is the International Convention for the Suppression of the Financing of Terrorism to which Vietnam has already acceded (the Convention entered into force for Vietnam on October 25, 2002).

In addition, the above-mentioned asset freeze can be implemented in accordance with the existing laws and regulations of Vietnam. These provisions can be found in some legal documents such as Penal Code, Code on Criminal Procedure, Law on Credit

Institutions, Government's Decree No. 64/2001/ND-CP dated 20 September, 2001 on the payment via Payment service Organizations etc.

According to Article 41 of the Penal Code, the proceeds of crime shall be confiscated. Before confiscating, interim procedures such as making inventory and freeze of banking account will be taken in order to prevent the use, disposal and dispersal of the assets which will be confiscated pursuant to the court's order. Article 115 of the Code on Criminal Procedure entitles the investigating agencies to carry out physical examination, searching dwelling, places, things, correspondence, postal parcels and matters for the seizure of tools and equipment used to commit crimes and of objects and proceeds of crimes. Under Article 121 of the Code on Criminal Procedure, the investigating agencies will make an inventory of the confiscated properties.

The law of Vietnam on credit and banking also contains some provisions on preventing and combating transactions relating to illegal money. Article 115 of the Law on Credit Institutions provides the application of measures to prevent the transactions relating to the money of illegal origin as one measure of the state management on banking activities. Article 19 of the Law on Credit Institution provides that credit institutions and other banking organizations shall not conceal, conduct any service relating to the money that is proven to be of illegal origin. In case of detecting an illegal sign of an amount of money, credit institutions and other banking organizations shall promptly inform competent state authorities.

9.2. However, Vietnam has yet enacted any separate legal document regulating the prevention and suppression of the financing of terrorism. Therefore, there is not adequate legal basis for freezing, confiscating and inventorying accounts in bank or credit institutions of the individuals who are alleged to finance terrorists. The present Code on Criminal Procedure does not contain provisions on freezing bank account of criminals, in general, and persons committing terrorist acts, in particular.

9.3. In the time to come, the competent authorities of Vietnam plan to amend the Code on Criminal Procedure along the direction of including the above-mentioned provisions in this Code.

In addition, the State Bank of Vietnam is, in collaboration with other agencies concerned, elaborating a Government's Degree on Money Laundering, which institutionalizes measures to prevent and suppress the financing of terrorism and clearly specifies responsibilities of agencies concerned in this regard.

10. Mechanisms to identify and investigate Usama bin Laden, Al-Qaida or Taliban - related financial networks; Vietnam's efforts in international cooperation:

10.1. The State Bank of Vietnam plays the key role in coordinating with domestic commercial banks to thoroughly scrutinize bank accounts and transactions in order to find out whether the individuals and entities included in the List have made any transactions with these banks. The commercial banks will coordinate with the State Bank of Vietnam to inform the Ministry of Public Security and the Ministry of Foreign Affairs of the said transactions, if any, to take necessary remedies.

10.2. On the regional and international cooperation on anti-terrorism, Vietnam is participating in the implementation of the Initiative on Alternative Remittance System within the APEC financial cooperation process with an aim to assessing the legal framework and systematic management of the contracting parties in order to recommend the APEC Financial Minister's Meetings measures to strengthen the financial sectors of State members and to better combat the financing of terrorism. Besides, Vietnam is also implementing the initiative on combating money laundering put forth by the ASEM Financial Minister's Meetings.

11. Steps taken by banks and/ or other financial institutions to locate and identify assets attributable to, or for the benefit of, Usama bin Laden or members of Al-Qaida or the Taliban, or associated entities or individuals; "due diligence" or "know your customer" requirements:

11.1. After receiving request and list of persons suspected to have connections with terrorist networks from the Ministry of Foreign Affairs, the State Bank of Vietnam shall forward this information to Vietnam's commercial banks for their scrutiny. The commercial banks shall conduct careful scrutiny manually as well as on the computers all accounts and transactions under their control to discover any customer of the name of the origin as the provided identifying information. With

the information and list of individuals provided, the State Bank of Vietnam, so far, has undertaken 6 rounds of scrutiny and has been reported by the commercial banks that there is no suspect who is subject to be informed to the United Nations.

11.2. Vietnamese banks, in general, follow the practices and standards of international banking activities ("know your customer") and strictly observe domestic laws and regulations of the host countries ("due diligence").

12. Regarding the frozen assets of the individuals and entities included in the List, Vietnamese commercial banks, so far, have not found out any accounts or funds of them.

13. Pursuant to Resolution 1452 (2002), Vietnam has not frozen or released any fund, financial and economic asset related Usama bin Laden or members of Al-Qaida, Taliban and associated individuals or entities as no account or fund of them was found.

14. Domestic legal basis to control the movements of funds or assets to the listed individuals or entities:

14.1. On the procedure of reporting suspicious transaction (relating to terrorist financing, fraud, money laundering etc.), up to now, Vietnam has not promulgated any legal documents formally and specifically regulating the suspicious transaction reports. However, as bound by Article 18 of the International Convention for the Suppression of the Financing of Terrorism, Vietnam shall adopt regulations imposing on financial institutions the obligation to promptly report to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith. As earlier stated in Paragraph 9.3, the State Bank, under Government's directive, is coordinating with other agencies concerned to draft the Government's Decree on combating money laundering. The provisions on reporting and processing of information relating to suspicious transactions will be specified in this Decree.

14.2. Some restrictions and regulations on the movement of precious commodities:

Decision No. 416-1998/QD-NHNN7 dated 08 December 1998 of the Governor of the State Bank on the bringing of gold by individuals when entering into or departing from Vietnam provides as follows:

"*Article 2. Individuals when departing from or entering into Vietnam will not have to declare at the Vietnam's border checkpoints if they bring along gold for non-commercial purposes with maximum weight of 300 gram (or besides the wearing jewelry, the quantity of each type not exceeding 5 pieces or 5 sets, in case of jewelry).*

Article 3. Individuals who bring gold (not of international standard) with the amount exceeding the maximum weight prescribed under Article 2 of this Decision but not exceeding 3000 gram when entering into Vietnam shall declare and pay tax for the exceeded amount in accordance with the relevant regulations. In case of exceeding 3000 gram, they shall complete the necessary procedures to lodge the excesses in the customs warehouse in order to bring them back when departing or to send them abroad. These individuals shall bear the arising costs.

...

Article 4. Individuals who bring more than 300 gram of gold when departing from Vietnam shall to apply for permission by the State Bank of Vietnam on the amount exceeding 300 gram.

...

Article 5. Procedure to apply for permission to bring gold when departing from Vietnam

Individual who wants to apply for permission to bring gold when departing from Vietnam under Article 4 of this Decision shall file its documents to the Central State Bank or the local branches of the State Bank in the districts or cities in accordance with the authorities to grant permission as prescribed under Article 6 of this Decision. The documents shall include:

1. An application to bring gold (which clarifies the purposes to bring gold);

2. Other documents specifying the origins of the gold to be brought (if any);

3. Certified copy of passport (if the passport copy is not certified, the original passport must be presented for reference).

..."

IV. TRAVEL BAN

15. Legislative and administrative measures to implement the travel ban with regards to individuals included in the List:

15.1. Generally speaking, the travel ban and restrictions are stipulated in many legal documents such as the Penal Code, the Ordinance on the Fine of Administrative Violations, Ordinance on the Entry into, Departure out and Residence in Vietnam of Foreigners and the Government's Degree No. 21/2001/ND-CP dated 28 May, 2001 on the Implementation of the Ordinance on the Entry into, Departure out and Residence in Vietnam of Foreigners.

15.2. Individuals in the 1267 Committee's List are included in the List of persons who are prohibited from entering into Vietnam.

At Vietnam's border checkpoints, competent authorities when checking passports or substituted documents, visas to enter Vietnam will collate the entering or departing person with List of persons who are prohibited from entering into Vietnam. If that person has the same name or personal identity with a person in the List, they will make a minute and promptly report to superiors to take appropriate measures.

16. Vietnam has included the names of listed individuals in List of persons who are prohibited from entering into Vietnam.

As was stated above in Paragraph 3, the List, however, provides only the names of individuals without photos or other identifying information. Competent authorities of Vietnam, therefore, find it difficult to check, detect these individuals and prevent them from entering into or transiting Vietnam.

17. The updated List of the 1267 Committee will be transmitted, right after the receipt of it, to competent authorities to update the List of persons who are prohibited from entering into Vietnam and to take appropriate steps.

At present, Vietnam has made tremendous efforts but due to the technical and financial restraints, electronic means to search List data have not been put in place at all border checkpoint, especially land border check points and seaports.

18. At every Vietnam's border checkpoint, competent authorities have not identified any listed individual entering into or transiting Vietnam.

19. Vietnam's Consular offices have always received the information concerning the List of persons who are prohibited from entering into Vietnam on time and in full. So far, these offices have not identified any listed individuals applying for visas to enter into Vietnam.

V. ARMS EMBARGO

Under the sanctions regime, all States are requested to prevent the direct or indirect supply, sale and transfer, to Usama bin Laden, members of Al-Qaida and Taliban organizations and other individuals and entities associated with them, from their territories or by their nationals outside their territories of arms and related material of all types, including the provision of spare parts and technical advice, assistance, or training related to military activities (paragraph 2 (c) of resolutions 1390 (2002) and paragraph 1 of resolution 1455 (2003)).

20. Vietnam does not possess weapons of mass destruction, nor does it export weapons and other equipment and technologies necessary for weapons development and production to Usama bin Laden, members of Al-Qaida and Taliban organizations and other associated individuals and entities. In fact, Vietnam has adopted many regulations on the control of weapons and explosives possession, transfer and export (as mentioned in Paragraph 3, Part II, Section B of the Supplementary Report to the Counter Terrorism Committee of the United Nations Security Council pursuant to paragraph 6 of Security Council Resolution 1373 (2001) on 18 December 2002).

21. On the criminalization of the violations of the arms embargo directed at Usama bin Laden, members of Al-Qaida and Taliban organizations and other associated individuals and entities:

Vietnam has not adopted any legal documents directly regulating the criminalization of the violations of arms embargo by the above-

mentioned persons and entities. Vietnam, however, has criminalized the offences relating to the management and control of weapons, explosives, toxin, radiation by a specific provision of the Penal Code (as stated in the answer to the Sub-paragraph 2 (a) of the Report to the Counter-Terrorism Committee pursuant to Article 6 of the UN Security Council Resolution 1373 (2001) on 05 February 2002).

22. On the arms/arms broker licensing system to prevent Usama bin Laden, members of Al-Qaida and Taliban organizations and other associated individuals and entities from obtaining items under the established arms embargo:

In Vietnam, civil individuals and entities are not granted license to use weapons. Vietnam has never been arms broker.

23. Safeguards to prevent weapons and ammunition produced within Vietnam from being used by Usama bin Laden, members of Al-Qaida and Taliban organizations and other associated individuals and entities:

The Ministry of Defense of Vietnam is in charge of the unified and strict management of weapons and ammunitions. In order to ensure that the weapons and ammunitions produced within Vietnam are solely used by armed forces and militia and civil individuals are prohibited and entities from using them. Violations of this will be subject to sanctions by the Penal Code of Vietnam.

VI. ASSISTANCE AND CONCLUSION

24. Vietnam is fully aware of the potential threats and severe consequences caused by terrorist acts to all fields and aspects of life in every nation. Vietnam holds that to prevent and suppress international terrorism, states need to strengthen cooperation in a close and comprehensive manner through bilateral, regional and multilateral cooperation, as well as within international organizations. Vietnam strongly supports efforts made by international community against terrorism, on the basis of full compliance with the United Nations Charter, the fundamental principles of international law, and in the interests of peace, stability and security all over the world.

With that in mind, besides steadily consolidating and developing the national legal system aimed at preventing and suppressing terrorism, Vietnam is actively cooperating with the international

community to combat this very dangerous crime by comprehensively and strictly implementing its international commitments in this regards. Besides, Vietnam is also ready to cooperate with other countries and international organizations in the region and over the world in combating international terrorism in accordance with the above-mentioned spirit and principles.

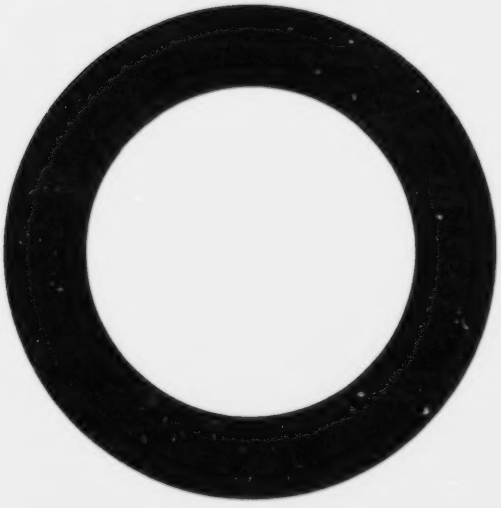
25. In the implementation of Resolution 1455 (2003) and other related Resolutions of the UN Security Council, Vietnam would like to make the following recommendations:

25.1. In order to effectively cooperate in this field, we think that the 1267 Committee and other countries concerned should address the outstanding matters as mentioned in Paragraphs 3 and 16 of this Report.

25.2. Vietnam seeks assistance in the following areas:

25.2.1. Training of inspection skills: at present, Vietnam lacks experts to meet all the complicated requirements arising in the current inspection activities. Vietnam's banking system, therefore, needs technical assistance in order to train a group of specialized experts within the overall network for uniform coordination, meeting the requirements of the Resolution 1455 (2003) and other resolutions adopted by the UN Security Council.

25.2.2. Developing an overall software and computer network to assist the tracking of assets of the suspected terrorists: presently, all headquarters and branches of Vietnam's commercial banks are equipped with computers. But, these banks don't have a uniform software to scrutinize, track and report the assets suspected to belong to the individuals and entities included in the List. The installment of a uniform special software, therefore, is extremely useful for the better implementation by these banks of the Resolution 1455 (2003) and other relevant resolutions of the UN Security Council.



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Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

Note verbale dated 20 October 2003 from the Permanent Mission of Guinea to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of the Republic of Guinea to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities and has the honour to transmit to him herewith the report of the Republic of Guinea submitted pursuant to paragraph 6 of resolution 1455 (2003) of 17 January 2003 (see annex).

The Permanent Mission of the Republic of Guinea to the United Nations apologizes for the late submission of this report.

03-57520 (E) 291003 041103

Annex to the note verbale dated 20 October 2003 from the Permanent Mission of Guinea to the United Nations addressed to the Chairman of the Committee

Introduction

I. Please provide a description of activities, if any, by Usama bin Laden, Al-Qaida, the Taliban and their associates in your country, the threat they pose to the country and the region, as well as likely trends.

1. As yet, there have been no activities by Usama bin Laden, Al-Qaida, the Taliban and their associates in the Republic of Guinea.

However, the threats that such individuals might pose to the country should not be overlooked. Because of its very aim and the cruelty of its followers, terrorism cannot be the province of any one country or region. All countries are involved, though certainly to different degrees, but the threat is general. Accordingly, the Republic of Guinea endorses the fight against terrorism. It is participating in all phases of that fight, inter alia by acceding to and implementing the international legal instruments on terrorism.

The Republic of Guinea, in its relations with its partners, affirms that it is opposed to any attempt to destabilize or to commit terrorist acts against anyone, by anyone and in any manner.

II. Consolidated List

2. How has the 1267 Committee's List been incorporated within your legal system and your administrative structure, including financial supervision, police, immigration control, customs and consular authorities?

The list which the Committee drew up and transmitted to the Guinean authorities has not been incorporated into Guinea's legal system. It is viewed as being intended to provide the authorities with information, which could be used later. Although clearly important, the list is not a legal instrument subject to constitutional proceedings by States.

However, in order to ensure that the provisions of resolutions 1267 (1999) and 1455 (2003) are implemented, the comprehensive list drawn up by the Committee has been transmitted to all administrative structures involved in the fight against terrorism. It has also been sent to the Republic of Guinea's diplomatic and consular missions in case any individual named on the list should apply for a visa.

The following Ministries have been informed: Ministry of Foreign Affairs and Cooperation; the Ministry of Security; the Ministry of Territorial Administration and Decentralization; the Ministry of Defence; the Ministry of Justice; the central bank; the Ministry of Economic Affairs and Finance.

Each of these entities works, within its own sphere of competence, to implement the various resolutions and legal instruments concerning the fight against terrorism. They cooperate very closely so as to work more effectively. Any

information coming from these structures concerning the implementation of these texts is transmitted to the focal point for the fight against terrorism in the Ministry of Foreign Affairs and Cooperation.

3. Have you encountered any problems with implementation with regard to the names and identifying information as currently included in the List? If so, please describe these problems.

Since this list and additional lists were transmitted to the competent structures, there have been no difficulties at any level, either with regard to the presentation of the names or the execution of the relevant instructions.

4. Have your authorities identified inside your territory any designated individuals or entities? If so, please outline the actions that have been taken.

No designated individual or entity has been identified, either by the authorities within the country or by the diplomatic and consular services.

Guinea has made every arrangement to ensure that the Committee is notified should any designated individual or entity be found to be in Guinea.

5. Please submit to the Committee, to the extent possible, the names of individuals or entities associated with Usama bin Laden or members of the Taliban or Al-Qaida that have not been included in the List, unless to do so would compromise investigations or enforcement actions.

No structure involved in the fight against terrorism has reported the presence or come across the name of any individual or entity associated with Usama bin Laden or members of the Taliban or Al-Qaida in Guinea.

Currently Guinea does not have any name to submit to the Committee for inclusion in that list or any addenda thereto.

6. Have any listed individuals or entities brought a lawsuit or engaged in legal proceedings against your authorities for inclusion in the List? Please specify and elaborate, as appropriate.

No lawsuit or legal proceedings have as yet been instituted against the Guinean authorities because of the inclusion of a name in the list.

7. Have you identified any of the listed individuals as nationals or residents of your country? Do your authorities have any relevant information about them not already included in the List? If so, please provide this information to the Committee as well as similar information on listed entities, as available.

The list does not contain the name of any Guinean or foreign national resident in Guinea.

8. According to your national legislation, if any, please describe any measures you have taken to prevent entities and individuals from recruiting or supporting Al-Qaida members in carrying out activities inside your country, and to prevent individuals from participating in Al-Qaida training camps established in your territory or in another country.

Under Guinean legislation there are no specific legislative measures to prevent entities or individuals from recruiting or supporting Al-Qaida members in carrying

out activities inside Guinea and to prevent individuals from participating in Al-Qaida training camps in Guinea or elsewhere.

However, there are general provisions of the Penal Code that prohibit such practices under the heading criminals "associations" in articles 269 et seq.

Articles 51, 53, 54 and 57 of the Penal Code characterize terrorist acts and complicity in the commission of such acts as offences and provide for their punishment, while articles 505 and 506 of the same Code characterize the provision of arms to terrorists as an offence and provide for punishment of that offence.

The provisions of these articles have been given in the various reports Guinea has submitted pursuant to Security Council resolution 1373 (2001). However, just in case, some of them are given here.

Article 505 of the Penal Code:

> "The following offences are acts of terrorism when they are connected to an individual or collective enterprise having the purpose of disturbing public order by intimidation or terror:
>
> 1. Wilful infringements on life, wilful infringements on the physical integrity of the person, abduction and unlawful detention as well as the hijacking of aircraft, ships or any other means of transport;
>
> 2. Larceny, extortion, property destruction, defacement or deterioration as well as offences with respect to computerized data;
>
> 3. The manufacture, possession and use of lethal or explosive machines or devices;
>
> 4. The production, sale, importation or exportation of explosive substances;
>
> 5. The acquisition, possession, transport or illegal carrying of explosive substances or devices manufactured with the assistance of such substances;
>
> 6. The possession, carrying or transport of weapons and munitions of the first and fourth categories, as defined in article 2 of Act L/96/008 of 22 July 1996."

Article 506: "The introduction into the atmosphere, onto the ground or into water, including the water of Guinea's territorial sea, of a substance likely to endanger the health of humans or animals or the natural environment, is also an act of terrorism when it is connected to an individual or collective enterprise having the purpose of seriously disrupting public order by intimidation or terror."

Article 507 of the Penal Code provides for the punishment of terrorist acts as follows: "Any terrorist act shall be punished by a sentence of 10 to 20 years' imprisonment. Should such an act result in the death of one or more persons, the person or persons responsible shall be sentenced to the death penalty. Attempting to commit the crime set forth in this article shall be punished in the same way as the crime itself."

Complicity in the offence is characterized and punished as follows:

An accessory is defined as:

Paragraph 2: "Any person who by donations, promises, abuse of authority and power, intrigues or plots, incites a terrorist act or gives instructions for it to be committed";

Paragraph 3: "Any person who obtains weapons, instruments or any other means that are used for the act, knowing that they are to be used for it";

Paragraph 4: "Any person who, with full knowledge, helps or assists the main perpetrator or the perpetrators of the act directly, in preparing, facilitating or carrying it out, without prejudice to the penalties established in special texts";

Paragraph 5: "Any person who, aware of the criminal conduct of those who carry out attacks or acts of violence against State security, the public order, individuals or property, provides them with accommodation, a meeting place or a place to hide".

The provisions of the various articles and others not cited in this report demonstrate clearly what the position of Guinean law is towards perpetrators of criminal acts.

This shows clearly that Guinean authorities reject categorically any form of cooperation with terrorists.

III. Financial and economic assets freeze

9. Please describe briefly:

- **the domestic legal basis to implement the asset freeze required by the resolutions above;**
- **any impediments under your domestic law in this context and steps taken to address them.**

The Republic of Guinea has no specific law relating to the freezing of assets.

As indicated in the initial report submitted to the Counter-Terrorism Committee pursuant to resolution 1373 (2001), in general, the monitoring mechanism in the Guinean financial system is based on respect for the principles of the Basel Committee on Banking Supervision. The report also indicated that the Central Bank of the Republic of Guinea was considering including in its bank monitoring mechanism the systematic control of private financial flows into the Republic of Guinea and of the portfolios of loans granted by the banks to certain entities. In that connection the Counter-Terrorism Committee had been asked for assistance in the detection of more sophisticated channels and mechanisms for money-laundering and the identification of groups and entities deemed to be sensitive.

It would also be desirable to receive assistance from the Committee established pursuant to resolution 1267 (1999), if possible for the drafting of specific legislation on the freezing of assets linked to terrorism.

10. Please describe any structures or mechanisms in place within your Government to identify and investigate Usama bin Laden, Al-Qaida or Taliban-

related financial networks, or those who provide support to them or individuals, groups, undertakings and entities associated with them within your jurisdiction. Please indicate, as appropriate, how your efforts are coordinated nationally, regionally and/or internationally.

There are no structures or mechanisms in place to identify such financial networks. However, they could be established with the assistance requested in the preceding paragraph and in the reports submitted pursuant to resolution 1373 (2001).

Meanwhile international cooperation is based on the means of action of the Financial Action Task Force on Money Laundering.

11. Please convey the steps banks and/or other financial institutions are required to take to locate and identify assets attributable to, or for the benefit of, Usama bin Laden or members of Al-Qaida or the Taliban, or associated entities or individuals. Please describe any "due diligence" or "know your customer" requirements.[2] Please indicate how these requirements are enforced, including the names and activities of agencies responsible for oversight.

In the absence of appropriate mechanisms and structures, Guinean banks are unable to identify assets attributable to Usama bin Laden or members of Al-Qaida or the Taliban, or associated entities or individuals, unless information is provided by external sources.

12. Resolution 1455 (2003) calls on Member States to provide "a comprehensive summary of frozen assets of listed individuals and entities". Please provide a list of the assets that have been frozen in accordance with this resolution. This list should also include assets frozen pursuant to resolutions 1267 (1999), 1333 (2001) and 1390 (2002). Please include, to the extent possible, in each listing the following information:

- **identification(s) of the person or entities whose assets have been frozen;**
- **a description of the nature of the assets frozen (i.e., bank deposits, securities, business assets, precious commodities, works of art, real estate property, and other assets);**
- **the value of assets frozen.**

Since there has been no identification, no assets have been frozen.

13. Please indicate whether you have released pursuant to resolution 1452 (2002) any funds, financial assets or economic assets that had previously been frozen as being related to Usama bin Laden or members of Al-Qaida or the Taliban or associated individuals or entities. If so, please provide reasons, amounts unfrozen or released and dates.

Guinean banks have not released any funds pursuant to that resolution, nor do they have any funds belonging to such individuals or entities.

14. Pursuant to resolutions 1455 (2003), 1390 (2001), 1333 (2000) and 1267 (1999), States are to ensure that no funds, financial assets or economic resources are made available, directly or indirectly, to Listed individuals or entities or for their benefit, by nationals or by any persons within their territory. Please indicate the domestic legal basis, including a brief description

of laws, regulations and/or procedures in place in your country to control the movements of such funds or assets to designated individuals and entities. This section should include a description of:

- **The methodology, if any, used to inform banks and other financial institutions of the restrictions placed upon individuals or entities listed by the Committee, or who have otherwise been identified as members or associates of Al-Qaida or the Taliban. This section should include an indication of the types of institutions informed and the methods used.**
- **Required bank-reporting procedures, if any, including the use of Suspicious Transaction Reports (STR), and how such reports are reviewed and evaluated.**
- **Requirements, if any, placed on financial institutions other than banks to provide STR, and how such reports are reviewed and evaluated.**
- **Restrictions or regulations, if any, placed on the movement of precious commodities such as gold, diamonds and other related items.**
- **Restrictions or regulations, if any, applicable to alternate remittance systems such as — or similar to — "hawala", as well as on charities, cultural and other non-profit organizations engaged in the collection and disbursement of funds for social or charitable purposes.**

It is worth recalling that there are no specific laws in Guinea dealing with such individuals and entities. However, the general laws and rules enacted apply to all situations that arise. The legislators have not deemed it necessary to draft ad hoc legislation pertaining to Usama bin Laden, Al-Qaida, the Taliban or their associates.

As for transfers of funds, these must be in line with the strict rules that are in effect.

- To inform banks and other financial institutions of the restrictions placed upon such individuals and entities, the Ministry of Foreign Affairs has sent administrative correspondence enclosing the list in question.
- Restrictions or regulations, if any, applicable to movements of precious goods (gold, diamonds and other articles of that kind) are in line with the Kimberly process to which Guinea is subject.

IV. Travel ban

15. Please provide an outline of the legislative and/or administrative measures, if any, taken to implement the travel ban.

The Republic of Guinea complies with Security Council resolutions 1455 (2003) and 1390 (2002) and all the provisions concerning the sanctions regime.

Accordingly, it applies mutatis mutandis the rules set forth in those resolutions, without having to introduce special legislation. However, no individual named on the list has travelled to Guinea.

16. Have you included the names of the listed individuals in your national "stop list" or border checkpoint list? Please briefly outline steps taken and any problems encountered.

The list of individuals has been transmitted to the various border checkpoints. These individuals are not on the national "stop list". Currently, no problem has been encountered in the implementation of these resolutions.

17. How often do you transmit the updated List to your border control authorities? Do you possess the capability of searching List data using electronic means at all your entry points?

The updated list is transmitted to the border checkpoints from time to time. Guinea does not yet have the capability to search List data using electronic means at all entry points.

18. Have you stopped any of the listed individuals at any of your border points or while transiting your territory? If so, please provide additional information, as appropriate.

No listed individual has come to any authority, border checkpoint or Guinean consulate seeking to enter or transit through Guinea. Thus there have been no arrests.

19. Please provide an outline of the measures, if any, taken to incorporate the List in the reference database of your Consular offices. Have your visa-issuing authorities identified any visa applicant whose name appears on the List?

No visa office has identified any visa applicant whose name is on the list.

V. Arms embargo

20. What measures, if any, do you now have in place to prevent the acquisition of conventional arms and weapons of mass destruction (WMD) by Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them? What kind of export control do you have in place to prevent the above targets from obtaining the items and technology necessary for weapons development and production?

Under the sanctions regime, all States are requested to prevent the direct or indirect supply, sale and transfer, to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals and entities associated with them, from their territories or by their nationals outside their territories of arms and related materiel of all types, including the provision of spare parts and technical advice, assistance, or training related to military activities (paragraph 2 (c) of resolution 1390 (2002) and paragraph 1 of resolution 1455 (2003)).

In the replies to the preceding questions, it has been stated that Guinea has no special legislation relating to Usama bin Laden, Al-Qaida, the Taliban or their associates. There are laws and rules that have a general application.

Act. No. L/96/008 of 22 July 1996 on weapons, ammunition, powders and explosives governs the acquisition, possession, import, export, control and classification of weapons. All these provisions are quoted in the supplementary report submitted by Guinea pursuant to Security Council resolution 1373 (2001).

These provisions, which do not specifically concern Usama bin Laden and the Al-Qaida network, are cited again below, just in case.

General provisions

Article 1: Weapons shall mean any sharp, piercing or blunt machines, instruments or utensils or any other product used to hit, wound or kill.

Article 2: The weapons and ammunition covered by this Act are classified under the following categories:

1. War material

Category 1: Firearms and munitions designed or intended for ground, naval, aerial or space warfare.

Category 2: Materiel destined to carry or use firearms in combat.

Category 3: Protective equipment for use in gas, chemical, incendiary or biological warfare.

Category 4: Defensive firearms and their munitions.

2. Firearms and munitions not considered to be war material

Category 5: Hunting weapons and their munitions.

Category 6: Edged weapons.

Category 7: Firearms for target shooting, fairs and exhibitions and their munitions.

Category 8: Historic weapons and munitions and collector's weapons.

Chapter 1
Manufacture of and trade in weapons and ammunition

Article 3: Any natural or legal person wishing to engage in the manufacture of or trade in material in categories 1 to 4 and category 5, must make a prior declaration to the Ministry of Defence and to the Ministry of the Interior, respectively. In both instances, a receipt shall be issued for the declaration.

Such trade in war material and defence weapons and ammunition in categories 1 to 4 may not be shut down and transferred nor may the intermediaries or publicity agents involved therein carry out their activities without the authorization of and supervision by the Government in accordance with such provisions as may be stipulated by decree.

Article 4: The Ministry of Defence shall be responsible for centralizing and coordinating through a war material monitoring authority whose powers shall be mandated by decree, State regulatory and control activities with respect to the manufacturing of and trade in material under this Act.

Article 5: The State shall be the exclusive importer of material in categories 1, 2, 3 and 4. An import authorization issued in accordance with the provisions of a joint order of the Ministry of the Interior and the Ministry of Trade shall be required for the import of material in categories 5 and 6.

Article 6: The export, under any customs regime, without authorization, of war material and analogous material, is prohibited.

Article 7: All barrels of military arms intended for foreign trade shall be subjected to tests attested to by the application of a stamp. An export mark is also stamped on the barrels.

Article 8: Anyone who engages without authorization in the manufacture of or trade in war material or defence weapons and ammunition or who acts as an intermediary or publicity agent for enterprises not authorized to do so shall be liable to one year's imprisonment and a fine of 500,000 to 1 million Guinean francs.

The offence may be reported by customs and excise officers, officers of the police and gendarmerie and compliance officers.

Chapter 2
Acquisition and possession of weapons and ammunition

Article 9: The acquisition and possession without authorization of weapons and ammunition in categories 1, 2, 3, 4 and 5 is forbidden.

Article 10: The Minister of Defence and the Minister of the Interior shall be responsible in their respective areas for regulating authorizations and exercising oversight with respect to the terms and conditions governing the possession and use of arms and ammunition.

Article 11: Category 1 weapons and ammunition and their spare parts are reserved for the armed forces and other services responsible for national defence.

The acquisition and possession by civilians of such weapons and ammunition or spare parts is prohibited.

The acquisition, possession and use of such weapons, ammunition and spare parts by military or paramilitary officers shall be governed by special provisions.

Article 12: The development, manufacture, possession, stockpiling, acquisition and transfer of biological agents, other agents and toxins whatever their origin and mode of production and in such types and in quantities as are not intended for preventive or protective purposes or for other peaceful purposes are prohibited.

It is forbidden to incite or assist in any manner any State, enterprise, organization, group or individual to engage in the acts referred to in paragraph 1.

Violations of the provisions of this article shall be punishable by three to four years of imprisonment and/or a fine of 200,000 to 800,000 Guinean francs.

Upon conviction, the court shall order the confiscation, with a view to their destruction, of the agents or toxins listed in this article. It may also order the temporary or permanent, complete or partial closure of the establishment where such agents or toxins were developed, manufactured, held or stockpiled; and order the confiscation of the equipment used to develop, manufacture, hold or stockpile such agents or toxins. The court may ban, for a period not exceeding five years, the convicted person from engaging in the activity which served as a cover for the commission of the offence.

Article 13: Anyone who has received treatment for a mental disease may not acquire or possess a weapon or ammunition.

Weapons and ammunition in the possession of anyone referred to in the preceding paragraph shall be seized.

Article 14: Authorization to acquire and possess weapons and ammunition may not be granted to:

- persons convicted of a crime;
- persons under protection or in detention;
- alcoholics or dangerous drug addicts.

Article 15: Persons aged 18 or younger may acquire and/or bear the weapons or ammunition in categories 6, 7 and 8.

Article 16: Authorization to acquire and bear weapons and ammunition shall be granted for a maximum period of five years. Application for its renewal shall be made to the competent authority referred to in article 10 of this Act.

Article 17: Anyone who, without having obtained the authorization referred to in article 10, acquires, transfers or possesses in any manner one or more of the weapons or corresponding ammunition listed in category 1 or 4 shall be liable to two to five years' imprisonment and/or a fine of 200,000 to 800,000 Guinean francs.

In addition, the court shall order, as necessary, the confiscation of the weapons and ammunition. If the offender has previously been sentenced to imprisonment or to a more severe punishment for a felony or misdemeanour, the term of imprisonment shall be 5 to 10 years and he may be subject to area banishment for a maximum period of five years.

Article 18: Anyone who obstructs or attempts to obstruct the implementation of these provisions shall be liable to two to five years' imprisonment and/or a fine of 100,000 to 500,000 Guinean francs.

Article 19: Any person who possesses a store of arms or ammunition in categories 1, 4 or 6 shall be liable to two to eight years' imprisonment and/or a fine of 300,000 to 1,000,000 Guinean francs.

Chapter 5
Powders and explosives

Article 26: The production, import, export, sale and possession of explosive powders and substances intended for military use shall be subject to the authorization and control of the Minister of Defence.

The production, import, export, use, trading and possession of explosive powders and substances intended for small-scale use shall be subject to the authorization and control of the Minister of the Interior.

Article 27: The production, import, export, trading, use, transport and storage of explosive powders and substances shall be subject to an authorization by joint order of the Ministers of the Interior, Trade and Industry.

Article 28: The following shall be liable to one to five years' imprisonment and/or a fine of 200,000 to 300,000 Guinean francs:

1. Anyone who sells, exports, produces or imports any explosive powders or substances without authorization.

2. Anyone authorized to manufacture, acquire, transport or store explosives who has not declared the disappearance of some or all of such products to the police or gendarmerie within 24 hours of learning of the event.

When the authorized party is a legal person, the same penalties shall apply to its directors if they knew of the disappearance but failed to declare it within the time limit stipulated in this article.

The penalties provided for in this article may be doubled in the case of reoffenders.

At the request of the administrative authority, the same ruling may also order the confiscation of the products being manufactured, imported, exported or sold and their means of production.

Article 29: Anyone producing or possessing, without a legitimate reason, any substance intended for use in an explosive shall be liable to two to five years' imprisonment and/or a fine of 200,000 to 500,000 Guinean francs.

Any manufacturers or dealers of dynamite shall be classed as gunpowder dealers.

Please identify the "specialized services" in Guinea responsible for providing early warning to other States.

Operational criminal information in Guinea is exchanged through Interpol, which has the logistics required for that purpose in each of its Member States.

21. What measures, if any, have you adopted to criminalize the violation of the arms embargo directed at Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them?

Delivering arms to Usama bin Laden, Al-Qaida and the Taliban and their associates is not an offence under the law. The answer to this question is given in paragraph 20 above.

22. Please describe how your arms/arms broker licensing system, if any, can prevent Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them from obtaining items under the established arms embargo.

The procedure for issuing arms licences is determined by the Ministry of the Interior, which has sole competence in this regard.

23. Do you have any safeguards that the weapons and ammunition produced within your country will not be diverted/used by Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated?

Guinea does not produce any weapons or ammunition, other than small calibre hunting weapons. Guinea does have regulations for this type of weapon and they are applied.

VI. Assistance and Conclusion

24-25. Would your State be willing or able to provide assistance to other States to help them implement the measures contained in the above-mentioned resolutions? If so, please provide additional details or proposals. Please identify areas, if any, of any incomplete implementation of the Taliban/Al-Qaida sanctions regime, and where you believe specific assistance or capacity-building would improve your ability to implement the above sanctions regime.

The Republic of Guinea would like to be assisted in the preparation of mechanisms and structures and rules to identify the channelling of illicit funds and to freeze such funds.

As regards training and equipment for border checkpoint agents (police, customs) assistance has been requested in the two previous reports submitted to the Committee established pursuant to Security Council resolution 1373 (2001).

United Nations S/AC.37/2003/(1455)/79

Security Council

Distr.: General
23 October 2003

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Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities

Letter dated 22 October 2003 from the Permanent Representative of the Philippines to the United Nations addressed to the Chairman of the Committee

Upon the instructions of my Government and with reference to your note of 7 July 2003, I have the honour to transmit herewith the Philippine country report submitted in compliance with resolutions 1267 (1999) and 1455 (2003) (see annex).

(*Signed*) Lauro L. **Baja, Jr.**
Permanent Representative

03-60609 (E) 141103

Annex to the letter dated 22 October 2003 from the Permanent Representative of the Philippines to the United Nations addressed to the Chairman of the Committee

Philippine Country Report
UN Security Council Resolutions 1267 and 1455
Al-Qaeda Sanctions Committee
October 2003

I. Introduction

Osama bin Laden's activities in the Philippines were reportedly discovered during the early part of 1996. Bin Laden has apparently established numerous organizations, corporations and charitable institutions some of which are under the direct control of his brother-in-law, Mohammed Jamal Khalifa. They were accordingly being utilized as conduits of funds for local extremists and their terrorist-related activities.

It was recorded that the Abu Sayyaf group was a primary beneficiary of the said funds, using them to facilitate their training in guerilla warfare techniques and to acquire high powered weaponry. There are also persistent reports on foreigners conducting training Abu Sayyaf and other terrorists in handling explosives, commando tactics, and related skills.

II. Consolidated List

II.-2. The 1267 Committee's list can be easily incorporated in our administrative structure as it is similar to the target list, watch list and wanted list being maintained by the various Philippine law enforcement agencies.

II-3. The List must include photographs and other pertinent data on past criminal records of the subject, in order to facilitate identification and profiling of the terrorist suspect. An indentification system based only on names is inadequate.

II-4. After arresting the suspected personalities identified in the list, authorities shall conduct a continued investigation through tactical interrogation of the suspect. However, if the suspected terrorist, whether a foreigner or a citizen of this country, has a pending warrant of arrest or has committed any offense against the law of the state, appropriate charges will be filed against him/her before the court.

II-5. There are numerous arrested suspected terrorist personalities that are under the custody of the Philippine authorities. Availability of information regarding their status is strictly restricted in order not to compromise pending court actions and investigations.

The following personalities have been convicted and were being investigated regarding their connections with the Jemaah Islamiyah and Al-Qaeda Groups:

A. Fathur Rohman al Ghozi, Indonesian national was arrested on January 15, 2002 and was convicted on April 18, 2002 for illegal possession of explosives under Sec. 3 of PD 1866 and was sentenced with 12 years' imprisonment. (However, he had escaped from detention on July 14, 2003, and was killed in October 2003).

B. Agus Dwikarna, Indonesian national, was arrested in Ninoy Aquino International Airport for illegal possession of explosives on March 13, 2002 and was convicted by the Pasay City Regional Trial Court Branch 17 on July 12, 2002.

II-6. As of mid-2003, there are no recorded legal actions filed by any individual or entities against our authorities regarding submissions to the Terrorist Watchlist.

II-7. While domestic legislation is still pending, the Philippines has adopted the generally accepted principles of UN Security Council Resolution 1373 on terrorism. Presently, the Anti-Terrorism bill is now undergoing deliberation both houses of the Philippine Congress. The proposed Senate bill includes salient provisions such as:

a. SECTION 6. ***Participation in an Activity of a Terrorist Organization*** - Any person who knowingly participates in any activity of a terrorist organization or a front of a terrorist organization intended to facilitate or carry out terrorist activity shall suffer the penalty of imprisonment for a period of not less than twelve (12) years but not more than twenty (20) years.

Participating in, facilitating of, or contributing to, an activity or a terrorist organization includes:

(1) providing, receiving or recruiting a person to receive training

(2) providing or offering to provide a skill or an expertise for the benefit of , at the direction of, or in association with a terrorist organization.

(3) Recruiting in order to facilitate or commit

(a) an offense under this Act, or

(b) an act or commission outside of the Philippines that, if committed in the Philippines, would be an offense under this act;

(4) entering or remaining in any country for the benefit of, at the direction of or in association with a terrorist organization; and

(5) making oneself, in response to instructions from any of the persons who constitute a terrorist organization, available to facilitate or commit

(a) an offense under this act, or

(b) an act or omission outside the Philippines that, if committed in the Philippines, would be an offense under this act.

The offense described herein will be considered committed, whether or not -

(1) the terrorists organization actually facilitates or carries out a terrorist activity;

(2) the participation of the offender actually enhances the ability of the terrorist organization to facilitate or carry out a terrorist activity; or

(3) the offender knows the specific nature of any terrorist activity that may be facilitated or carried out by the terrorist organization.

b. SECTION 7. ***Materially Supporting or Financing of Terrorism*** Any person, group, organization or entity who knowingly provides properties or finances, or possesses them for or on behalf of terrorist organizations, or facilitates any way the provision or possession of such properties or finances shall suffer the penalty of life imprisonment.

Any person who solicits or invites financial contribution or other support for a terrorist or a terrorist organization shall suffer the penalty of imprisonment of not less than eight (8) years but not more than fourteen (14) years.

c. SECTION 8. ***Harboring or Concealing of Terrorists.*** - Any person who knowingly harbors or conceals, any person whom he or she knows, or has reasonable grounds to believe, to be a person who has carried out or is likely to carry out a terrorist activity shall suffer the penalty of imprisonment of not less than six (6) years but not more than twelve (12) years.

d. SECTION 10. ***Membership in a Terrorist Organization.***- Any person who belongs to, or professes to belong to, a terrorist organization or a front of a terrorist organization or arranges or assists in the arrangement or conduct of, or addresses, a meeting of two (2) or more persons, knowing that the meeting is to support or further the activities of the terrorist organization or is to be addressed by a person belonging or professing to belong to that terrorist organization, shall suffer the penalty of imprisonment or not less than ten (10) years but not more than sixteen (16) years.

III. Financial and Economic Asset Freeze

III-9 Legal basis discussed:

A. Sec. 10 of Republic Act 9194 (RA 9194) of the Anti Money Laundering law states that "the Court of Appeals upon application *ex parte* by the Anti Money Laundering Council (AMLC) and determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity may issue freeze order which shall be effective immediately". In relation to Sec. 3 paragraph 12 of RA 9194 that "unlawful activities" as defined, shall include those acts perpetrated by terrorist against non-combatant persons and similar targets.

B. Impediments to the assets freezing procedure:

a. In cases prejudicial to a candidate for an electoral office during an election period (rule 16.1 of RA 9160 as amended by RA 9194).

b. The Philippine Bank Secrecy Law (RA 1405) (This however has been amended to help enhance the powers of the AMLC, see below).

III.10. President Gloria Macapagal Arroyo's 14 point policy for the campaign against terrorism, specifically under the 4th action point , calls for the enlistment of public and private corporations and personalities in the fight against terrorism. The Securities and

Exchange Commission is conducting an inventory of existing public and private organizations that my be wittingly or unwittingly used by terrorists in their operations, particularly in channeling and accessing funds in support of their illegal activities. The Commission has also identified and verified corporations and charitable institutions that may be used as front organizations by terrorist groups".

With the assistance of the UK "Charity Commission of England and Wales" the Philippines is now examining ways to improve its regulations of Non-Governmental Organizations (NGOs) particularly with respect to illicit finance.

General assistance in combating money laundering is being provided by the Rapid Reaction Mechanism (RRM) of the European Community.

The Philippines supports the ASEAN Declaration on Joint Action to Counter Terrorism - adopted on November 5, 2001 in Bandar Seri Begawan, Brunei Darussalam to advance efforts in fighting terrorism through the following measures: 1) Early ratification of all relevant anti terrorist conventions. 2) Enhancement of information and intelligence exchange to facilitate the flow of information on terrorist organization, movement and funding for the protection of lives, property and free security of all modes of travel.

The RP-Australia MOU on Cooperation to Combat International Terrorism, signed on March 4, 2003 will facilitate greater cooperation between the Philippines and Australia in preventing and suppressing international terrorism by providing a framework for cooperation for all concerned agencies on areas such as information and intelligence exchange, law enforcement activities, money laundering and terrorist financing, and the development of effective counter-terrorism legal instruments.

III-11. The steps which Banks and/or other financial institution are required to take in case assets identified are attributed to finance Al-Qaeda or Taliban activites are covered under R.A. 9194 as follows:

a. Sec. 6 paragraph c, provides that "Covered institution shall report to the Anti-Money Laundering Council (AMLC) all covered transaction and suspicious transactions within five (5) working days from the occurrence thereof, unless the supervising authority prescribed a longer period not exceeding ten (10) working days.

b. Sec. 10 provides that "The Court of Appeals, upon application of the AMLC and after determination that probable caused exist that any monetary instrument or property is in any way related to an unlawful activity as defined in Sec. 3 hereof, may issue a freeze order which shall be effective immediately.

III-12-13. The lists of assets of individuals and entities that are frozen under the newly promulgated Anti Money Laundering Act (AMLA) are subject to strict confidentiality as to the nature of bank deposits, securities, and other assets.

III-14. Domestic legal basis in controlling the movement of funds and assets:

Par. 1. Under Rule 13.1 of RA 9160 as amended by RA 9194 on **Request for assistance from foreign states** - Where a foreign state makes a request for assistance in the investigation or prosecution of a money laundering offense, the AMLC may execute the request or refuse to execute the same and inform the foreign state of any valid reasons for not executing the requestor for delaying the execution thereof. The principle of mutuality and reciprocity shall for this purpose, be at all times recognized.

Par. 2. Banks reporting procedure on suspicious transactions under Rule 5.3 of 9160 as amended by RA 9194 states that "As may be directed by the AMLC and/or in the exercise of their supervisory and/or regulatory powers over covered institution under their respective jurisdiction, supervising authorities may require all suspicious transactions with covered institution, irrespective of the amount involved, to be reported to the AMLC when there is reasonable belief that any money laundering activity or any money laundering offenses is about to be, is being or has been committed.

Administrative sanctions for non-compliance with such suspicious transaction reporting requirements may be imposed by supervising authorities as authorized under their respective charter.

Par. 3. Same with Par. 2 requiring Covered Institution which was defined by Rule 3 of RA 9160 referring to Banks, offshore banking units, quasi banks, trust entities, non-stock savings and loan associations, pawnshops, and all other institution, including their subsidiaries and affiliates supervised and/or regulated by the Bangko Sentral ng Pilipinas (BSP).

Par 4-5. In July 2003, implementing rules and regulations (IRR) were approved by the Philippine Congress for the amended AMLA providing for the selective lifting of the Bank Secrecy Law. The provisions allow the AMLC and the BSP to examine bank deposits and investments in the course of their investigation of suspected money laundering activities and other crimes specified under the AMLA.

The IRR, which has been approved by the Congressional Oversight Committee (COC), lays the parameters for the implementation of the AMLA and its subsequent amendments as pushed for by the Financial Action Task Force (FATF).

The IRR authorizes the AMLC to file an ex parte application for the issuance of a freeze order if, after an investigation, the council determines that funds or properties are in any way related to any illegal activities covered by the AMLA.

IV. Travel Ban

IV-15. Travel bans may be effected through:

A. Orders issued by the Office of the President

B. Orders issued by the Department of Justice

C. Orders issued by the Regional Trial Courts; and

D. Sec. 29 of the Philippine Immigration Law

IV-16. Lists of terrorist personalities coming from the international community together with reports of other intelligence agencies are being consolidated with the Bureau of Immigration's "blacklist" of individuals.

IV-17. The list of our border control authorities are updated daily through the online network system of the Bureau of Immigration.

General assistance in improving border control management is being provided by the Rapid Reaction Mechanism (RRM) of the European Community.

IV-18. As of January 2003, 400 foreigners were excluded from the entering the country, 12 of which were recorded in the blacklist of the Bureau of Immigration. However, there was no record of personalities encountered with known links to the al Qaeda organization.

V. Arms Embargo

V-20-21. The Philippines does not have any legislative act at present that specifically criminalizes violations of the arms as called for UNSCR 1455. However, under the proposed "Anti Terrorism Bill", any person who manufacture, possesses, acquires, supplies, uses, or sells, explosives, biological agents, chemical agents, nuclear weapons or equipment and instrument used in the productions, distribution, released or spread of any of the foregoing, with the intent to endanger, directly or indirectly, the safety of one or more individuals, or to cause great damage to property, is liable for terrorism.

Furthermore, any person, group, organization or entity that knowingly provides properties, or finances, or possesses them for or on behalf of terrorist or terrorist organizations, or facilitates in any way the provision or possession of such properties or finances shall be penalized for materially supporting or financing terrorism.

V-22. In lieu of the absence of a specific arms broker licensing system that will prevent terrorists from obtaining items under the established arms embargo, the rules governing Customs Brokers under the Tariff and Customs Code of the Philippines shall be applied.

Section 3047 of the Code states that "any person who files and entry or facilitates the processing or release of any shipment shall be liable for smuggling if the ostensible owner importer or consignee and/or the ostensible given address of the owner, importer or consignee is fictitious and the shipment is found to be unlawful. If the violator is a customs broker, his/her license shall be revoked by the Commissioner of Customs.

Higher standards for the qualifications of customs brokers should be established.

V-23. The Philippines does not have specific regulations regarding firearms diversions which could be used by terrorists, but other existing regulations essentially curtail the practice. Presidential Decree 1866, amended by RA 8294, codified the various regulations on illegal/unlawful possession, manufacture of firearms, ammunition or explosives and imposed stiffer penalties for certain violations thereof.

The provisions of the Firearm Acquisition, Possession, Licensing and Revocation of Firearms License regulations, particularly Standard Procedure Nr. 13 (Licensing of Firearms) the qualifications of person and individuals who are qualified to acquire firearms and ammunition are indicated. In relation to Circular No. 2 (Annual Verification of Firearms), the purpose of annual verification of firearms is to determine the actual existence of firearms, to ascertain if the licensee is still qualified to possess the firearms, and to find out if the firearm holder is up to date in the payment of his firearms license fees.

VI. Assistance and conclusions

VI-24. The Philippine government as a matter of national policy supports the various international resolutions and covenants against terrorism. With these measures, the Philippines seeks to establish and develop networking/linkages to provide close rapport, working relationships, and coordination with other concerned states in the global campaign against terrorism.

VI-25. The Philippines strongly favors increased information and intelligence exchanges between/among member states and concerned regional and international organizations. In particular, enhanced exchange of information on personalities, groups, associations, including entities used as conduits of terrorists funds should be pursued.

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Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities

Note verbale dated 22 October 2003 from the Permanent Mission of Peru to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Peru to the United Nations presents its compliments to the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities and has the honour to submit the report of the Government of Peru in accordance with paragraph 6 of resolution 1455 (2003) (see annex).

03-58796 (E) 061103 061103

Annex to the note verbale dated 22 October 2003 from the Permanent Mission of Peru to the United Nations addressed to the Chairman of the Committee

Report of Peru to the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities

In accordance with the provisions of Security Council resolution 1455 (1999) Peru is submitting the following updated report concerning the actions taken to implement Security Council resolutions 1267 (1999), 1333 (2000) and 1390 (2002) concerning the fight against terrorism. The report has been prepared in accordance with the guidelines established by the Committee.

I. Introduction

1. **Please provide a description of activities, if any, by Osama bin Laden, Al-Qaida, the Taliban and their associates in your country, the threat they pose to the country and the region, as well as likely trends.**

No activities by Osama bin Laden, Al-Qaida, the Taliban and their associates have been detected in Peru thus far. That being so, the threats and risks for Peru are the same as those for any other country.

II. Consolidated List

2. **How has the 1267 Committee's List been incorporated within your legal system and your administrative structure, including financial supervision, police, immigration control, customs and consular authorities?**

Peru has taken the following steps in that connection:

The Ministry of Foreign Affairs has referred the Committee's updated list to the national immigration, consular, financial supervision and police authorities for inclusion in the relevant files and for action as necessary.

This List is also in the files of the intelligence unit of the Counter-terrorism Directorate of the National Police so that it can be used throughout the nation.

The financial supervision activities are set forth in paragraph 10 below.

3. **Have you encountered any problems with implementation with regard to the names and identifying information as currently included in the List? If so, please describe these problems.**

Identifying data must be expanded. The Peruvian police and immigration authorities believe that the photographs and fingerprints of individuals included in the List might be an additional element that would facilitate identification, particularly when altered or fraudulent documents are presented.

4. **Have your authorities identified inside your territory any designated individuals or entities? If so, please outline the actions that have been taken.**

Thus far, no designated individual or entity has been identified within Peruvian territory.

5. **Please submit to the Committee, to the extent possible, the names of individuals or entities associated with Osama bin Laden or members of the Taliban or Al-Qaida that have not been included in the List, unless to do so would compromise investigations or enforcement actions.**

Thus far we have not identified any individual or entity associated with Osama bin Laden or members of the Taliban or Al-Qaida that have not been included in the List.

6. **Have any listed individuals or entities brought a lawsuit or engaged in legal proceedings against your authorities for inclusion in the List? Please specify and elaborate, as appropriate.**

Not applicable.

7. **Have you identified any of the listed individuals as nationals or residents of your country? Do your authorities have any relevant information about them not already included in the List? If so, please provide this information to the Committee as well as similar information on listed entities, as available.**

No listed individual has been identified as a national or resident of Peru.

8. **According to your national legislation, if any, please describe any measures you have taken to prevent entities and individuals from recruiting or supporting Al-Qaida members in carrying out activities inside your country, and to prevent individuals from participating in Al-Qaida training camps established in your territory or in another country.**

Our legislation provides for penalties for various acts of collaboration with terrorism when such acts are committed within Peruvian territory. Indeed, article 4 of the Decree Law No. 25475 reads as follows:

"Article 4. Collaboration with terrorism

"Anyone who willfully secures, gathers, collects or supplies any goods or means or in any manner engages in acts such as to further the commission of offences referred to by this Decree Law or furthers the goals of a terrorist group, shall be punished by a term of imprisonment of no less than 20 years."

"The following constitute acts of collaboration:

"(a) The supplying of documents or information on persons, assets, installations, public or private buildings or anything else that specifically assists or facilitates the activities of terrorist groups or elements.

"(b) The transfer or use of any type of lodging or other means susceptible of serving to conceal persons or store weapons, explosives, propaganda, provisions, medicines or other items connected with terrorist groups or with their victims.

"(c) The intentional transport of persons belonging to terrorist groups or connected with their criminal activities and the rendering of any kind of assistance to help them to flee.

"(d) The organization of courses or the managing of centres for the indoctrination and instruction of terrorist groups, operating under any cover.

"(e) The manufacture, acquisition, possession, theft, storage or supplying of arms, ammunition or explosive, asphyxiating, inflammable, toxic or any other type of substances or objects that might cause death or injury. The possession or concealment of arms, ammunition or explosives belonging to the armed forces or the National Police of Peru constitutes an aggravating circumstance.

"(f) Any form of economic assistance, aid or mediation provided or done voluntarily for the purpose of financing the activities of terrorist groups or elements."

III. Financial and economic assets freeze

Under the sanctions regime, States are to freeze without delay the funds and other financial assets or economic resources of the listed individuals and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, assets or resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory. For the purpose of implementation of the financial prohibitions in this sanctions regime, "economic resources" is defined to mean assets of every kind, whether tangible or intangible, movable or immovable.

9. **Please describe briefly:**

- **The domestic legal basis to implement the asset freeze required by the resolutions above;**

(i) Act No. 26702, the General Act on the Financial System and the Insurance System and on the Organization of the Superintendence of Banking and Insurance (articles 140, 375 to 381).

(ii) Act No. 27379, which provides for special restrictions on rights during preliminary investigations is applicable inter alia to the offences of terrorism and illicit drug trafficking. Article 2, paragraph 4, refers to the seizure of assets and article 2, paragraph 5, authorizes the lifting of bank secrecy and tax confidentiality.

(iii) Act No. 27693, establishing the Financial Intelligence Unit.

(iv) Supreme Decree No. 163-2002-EF approving the Regulations of the Act establishing the Financial Intelligence Unit.

(v) Act No. 27765 Act on Money Laundering.

In addition, in the context of the judicial proceedings already initiated or about to be initiated, the Code of Criminal Procedure and the Code of Civil Procedure establish

rules providing for restrictions on the right of citizens to property. Both require a court order in order to restrain assets or freeze bank accounts.

- **Any impediments under your domestic law in this context and steps taken to address them.**

10. **Please describe any structures or mechanisms in place within your Government to identify and investigate Osama bin Laden, Al-Qaida or Taliban-related financial networks, or those who provide support to them or individuals, groups, undertakings and entities associated with them within your jurisdiction. Please indicate, as appropriate, how your efforts are coordinated nationally, regionally and/or internationally.**

With respect to structures and mechanisms in Peru to identify and investigate financial networks linked to terrorism, we should mention the Superintendence of Banking and Insurance, hereinafter referred to as SBI, and the Financial Intelligence Unit, known as FIU, which are operational.

The SBI, which is the agency responsible for the regulation and supervision of the financial system, insurance and pensions, is responsible for sending to financial institutions each updated version of the Consolidated List, so that banks and other financial institutions can report whether such persons or organizations have accounts in the national financial system.

The FIU is the institution responsible for analysis, processing and transmission of information to prevent and detect laundering of money and assets. Analysis of information consists in the study and examination by FIU of suspicious communications and transactions provided by bodies required to do so. Processing of information includes organization, processing and classification of that information for the purpose of facilitating analysis. Transmission of information consists in communications which the FIU sends to the Public Prosecutor's Office regarding suspicious transactions that could involve laundering of money or assets.

For the purpose of appropriate coordination in the elaboration of strategies, policies and procedures for the prevention of laundering of money or assets, the FIU has an Advisory Council composed of a representative of SBI, who presides, and representatives of the National Superintendence of the Tax Administration (SUNAT), the National Regulatory Commission for Business and Securities (CONASEV), the Public Prosecutor's Office, the Ministry of Economic Affairs and Finance, the Ministry of External Trade and Tourism, the Central Reserve Bank and the Office of the Controller-General of the Republic.

The FIU also receives support from liaison officers appointed by the heads of the Superintendence of Banking and Insurance, the Public Prosecutor's Office, the National Superintendence of the Tax Administration, Customs, the National Regulatory Commission for Business and Securities and the Ministry of the Interior, whose duty it is to consult and to coordinate the activities of FIU with the relevant bodies.

As for coordination at the regional and/or international level, the act establishing the FIU authorizes it to collaborate or exchange information with the competent authorities of other countries which have analogous functions, under international conventions and agreements in the area of laundering of money or assets.

The collaboration and exchange of information with the competent authorities of other countries will be governed by the provisions of international treaties and agreements and, when applicable, the general principle of reciprocity and acceptance by the authorities of these countries of the same obligations concerning professional confidentiality as those which apply to nationals. Thus, the FIU can enter into cooperation agreements with foreign entities of a similar nature and/or with public or private institutions, both national and foreign, as necessary for the performance of its duties.

At the police level, it should be noted that in 2003, the Counter-Terrorism Directorate of the National Police established an office for counter-terrorist financial investigation that will work with FIU in cases that call for more thorough investigations and use of the FIU's legal powers (the National Police does not have such powers). As for its own work, the operational mechanisms are being established.

11. **Please convey the steps banks and/or other financial institutions are required to take to locate and identify assets attributable to, or for the benefit of, Osama bin Laden or members of Al-Qaida or the Taliban, or associated entities or individuals. Please describe any "due diligence" or "know your customer" requirements. Please indicate how these requirements are enforced, including the names and activities of agencies responsible for oversight.**

With regard to the steps that banks and other institutions are required to take to locate and identify assets attributable to Osama bin Laden, members of Al-Qaida or the Taliban, or associated entities or individuals, the procedure is that, on receipt of the communication from the SBI mentioned in the preceding paragraph, the financial institutions conduct the necessary investigations in order to determine whether any of the listed individuals or organizations have an account with them. The results of such investigations are reported to the SBI.

To date, there have been no reported cases of accounts in the name of listed individuals or organizations having been found.

Moreover, in Peru, all financial institutions are required to ensure that only named accounts are held, and also to identify their customers in as detailed a way as possible and to keep information concerning their customers and their principal transactions for a minimum period of 10 years.

Financial institutions also have a legal obligation to record cash transactions exceeding a given amount (currently US$ 10,000 per transaction, or US$ 50,000 for all operations in the course of a month) and to report any suspicious financial transactions to the FIU.

Institutions that are required to provide information must also:

- Implement prevention mechanisms for the detection of unusual or suspicious transactions, whereby adequate and up-to-date information concerning their customers, the correspondent bank and its staff may be obtained.
- Procedures under the prevention programme must be set down in a handbook on the prevention of money-laundering.
- The prevention mechanisms must be based on an adequate understanding of the financial markets, the stock exchange and commercial markets, with a view

to identifying the normal characteristics of transactions conducted in respect of given products and services, so that they may be compared with transactions conducted in accordance with the mechanism.

They must also keep checks on or records of their customers' transactions, either manually or with computers.

Lastly, financial institutions are required to conduct regular training programmes — such as the "know your customer" programme — for their staff and to instruct them in the above-mentioned requirements. Monitoring of compliance with these rules is the task, within these institutions themselves, of management-level officials known as Compliance Officers, who act as liaison with the competent authorities.

With regard to "due diligence" or "know your customer", the situation is that, under article 14 of Supreme Decree 163-2002-EF, "know your customer" means that the entities required to report must insist on the presentation of public or private documents that establish the identity of their regular or occasional customers at the time that the trading relationship commences and, in particular, when the customer seeks to conduct a transaction involving a sum equal to or greater than the amount for which recording of transactions is required. They must therefore require their customers, when these are individuals, to present documents for identification, such as the national identity document, birth certificate, passport, immigration certificate, driving licence or any other official document with a photograph, that provides information concerning the customer's full name, date of birth, nationality, trade or profession, domicile and distinguishing marks. The credentials of persons acting on their behalf, and the identification of such persons, must also be required. In the case of corporations, they must request company contracts, articles of association or any other official or private document that reliably establishes at least the registered name or title, status, purpose and domicile of the corporation.

The reporting entities must take reasonable steps to obtain, record and update information on the true identity of their customers, whether regular or not, and on any commercial transactions conducted.

With regard to agencies responsible for oversight, the situation is that, under article 25 of the above-mentioned decree, agencies overseeing the reporting entities must monitor and oversee compliance with the rules on prevention of money- or asset-laundering. In the performance of their duties concerning monitoring and oversight of the money-laundering prevention system, the oversight bodies are supported by the Compliance Officer, the internal auditors and the external audit companies of entities that are corporations.

The Compliance Officer is the official responsible for overseeing compliance with the money-laundering prevention system by the reporting entities that are corporations, with the relevant legislation and with policies and procedures established by the entities themselves. Every six months the Compliance Officer must issue a report on the functioning of, and level of compliance with, the money-laundering prevention system within the reporting entities; the report is made available to the Board of Directors or an equivalent body.

The internal auditors and the external audit companies of the reporting entities that are corporations must carry out an assessment of the money-laundering prevention system in order to verify compliance with the relevant rules in this area.

12. **Resolution 1455 (2003) calls on Member States to provide "a comprehensive summary of frozen assets of listed individuals and entities". Please provide a list of the assets that have been frozen in accordance with this resolution. This list should also include assets frozen pursuant to resolutions 1267 (1999), 1333 (2001) and 1390 (2002). Please include, to the extent possible, in each listing the following information:**

- **Identification of the person or entities whose assets have been frozen;**
- **A description of the nature of the assets frozen (i.e., bank deposits, securities, business assets, precious commodities, works of art, real estate property, and other assets);**
- **The value of assets frozen.**

To date, no account in the name of the listed individuals or organizations have been identified. There have therefore been no grounds for freezing any assets.

13. **Please indicate whether you have released pursuant to resolution 1452 (2002) any funds, financial assets or economic assets that had previously been frozen as being related to Osama bin Laden or members of the Al-Qaida or the Taliban or associated individuals or entities. If so, please provide reasons, amounts unfrozen or released and dates.**

Not applicable. See reply to paragraph 12.

14. **Pursuant to resolutions 1455 (2003), 1390 (2001), 1333 (2000) and 1267 (1999), States are to ensure that no funds, financial assets or economic resources are made available, directly or indirectly, to listed individuals or entities or for their benefit, by nationals or by any persons within their territory. Please indicate the domestic legal basis, including a brief description of laws, regulations and/or procedures in place in your country to control the movements of such funds or assets to designated individuals and entities. This section should include a description of:**

- **The methodology, if any, used to inform banks and other financial institutions of the restrictions placed upon individuals or entities listed by the Committee, or who have otherwise been identified as members or associates of Al-Qaida or the Taliban; this section should include an indication of the types of institutions informed and the methods used;**
- **Required bank-reporting procedures, if any, including the use of suspicious transaction reports (STRs), and how such reports are reviewed and evaluated;**
- **Requirements, if any, placed on financial institutions other than banks to provide STRs, and how such reports are reviewed and evaluated;**
- **Restrictions or regulations, if any, placed on the movement of precious commodities such as gold, diamonds and other related items;**
- **Restrictions or regulations, if any, applicable to alternate remittance systems such as — or similar to — "hawala", as well as on charities, cultural and other non-profit organizations engaged in the collection and disbursement of funds for social or charitable purposes.**

As was mentioned under point 10, the Superintendency of Banking and Insurance sends financial institutions every update of the consolidated list, so that they may report whether any listed individuals or organizations maintain accounts in the national financial system.

In addition, the Financial Intelligence Unit reviews and examines the suspicious transaction reports and transaction records sent in by the reporting entities and compiles, processes and classifies such information, so that it can inform the Public Prosecutor's Office, as appropriate, of any transactions that appear to involve money- or asset-laundering.

In accordance with Act No. 27693, article 8, paragraphs 1 to 14, the persons or entities required to report ("reporting persons and entities") are:

1. Financial and insurance institutions and other firms covered by articles 16 and 17 of the General Act on the Financial System and the Insurance System and on the Organization of the Superintendency of Banking and Insurance (Act No. 26702);

2. Firms that issue credit and/or debit cards;

3. Savings-and-loan cooperatives;

4. Trustees or administrators of assets, companies or syndicates;

5. Stock or other securities brokerage firms;

6. Firms administering mutual funds, investment funds, collective funds and pension funds;

7. The Stock Exchange and other centralized trading mechanisms and institutions for securities clearance and settlement;

8. The Commodities Exchange;

9. Firms or individuals dealing in automobiles, ships or aircraft;

10. Firms or individuals engaged in construction and real estate;

11. Casinos, lottery firms and gambling houses, including bingo parlours, horse-racing tracks and agencies of the foregoing;

12. Bonded warehouses;

13. Customs agencies;

14. Firms whose computer programmes and systems make it possible to carry out suspicious transactions.

Also covered are firms that deal in jewellery, precious metals, precious stones, coins, objets d' art and stamps.

As specified in article 9, paragraph 1, of Act No. 27693 and annex No. 1 of the Regulations approved by Supreme Decree No. 163-2002-EF transactions subject to control are those carried out by regular or occasional clients in amounts of US$ 10,000.00 (ten thousand United States dollars) or more — or the equivalent in national currency — except in the case of funds transfer firms, casinos, lottery firms and gambling houses, including bingo parlours, horse-racing tracks and agencies of

the foregoing, which must report transactions of US$ 2,500.00 (two thousand five hundred United States dollars) or more or the equivalent in national currency.

As specified in Act No. 27693, article 9, paragraph 1, the following transactions are subject to control:

(a) Cash deposits into a current account, savings account, certificate of deposit or other fixed-term account;

(b) Securities deposits, figured at their quoted market value at the close of the day prior to deposit;

(c) Purchase of negotiable bonds or other debt instruments from the issuing entity;

(d) Purchase or sale of public or private securities or shares in mutual funds;

(e) Purchase or sale of precious metals (gold, silver, platinum);

(f) Purchase or sale in cash of foreign currency;

(g) Remittances or transfers originated or received (domestic or foreign), regardless of the method employed to effect the transaction and regardless of the intended use (deposit, swap, purchase or sale of securities, etc.);

(h) Purchase or sale of cheques drawn on foreign accounts and of traveller's cheques;

(i) Payment for imports;

(j) Collection for exports;

(k) Sale of the portfolio of a financial entity to third parties;

(l) Loan servicing;

(m) Loan prepayments;

(n) Establishment of trusts or any other type of fiduciary arrangements;

(o) Purchase or sale of goods and services;

(p) Futures contracts;

(q) Other operations or transactions considered important that the Regulations may specify.

Transactions carried out at one or more offices or agencies of a reporting entity during one calendar month by or on behalf of the same person that together amount to US$ 50,000.00 (fifty thousand United States dollars) or more — or the equivalent in national currency — or, in the case of funds transfer firms, casinos, lottery firms and gambling houses, including bingo parlours, horse-racing tracks and agencies of the foregoing, to US$ 10,000.00 (ten thousand United States dollars) or more — or the equivalent in national currency — shall be reported as a single transaction.

In addition, in accordance with article 20 of the Regulations approved by Supreme Decree No. 163-2002-EF, in conformity with article 11 of Act No. 27693, reporting persons and entities must inform the Financial Intelligence Unit of any suspicious transactions they uncover in the course of their operations, regardless of

the amounts involved, within thirty (30) calendar days at most from the date the transactions are detected.

Any unusual transaction that, based on the information the reporting person or entity has about the client, leads it to believe, that the funds involved in the transaction are derived from some illicit activity because they have no apparent economic or legal justification shall be deemed to be suspicious for these purposes.

To identify unusual transactions, the reporting persons and entities must pay special attention to all transactions, completed or in process, the particular characteristics of which bear no relation to the economic activity of the client or are outside the normal limits for the market or have no obvious legal justification.

In that regard, the information that reporting persons and entities must obtain from their clients when they identify themselves should enable them to create a profile of the activity of each client and thus make it possible to detect unusual transactions.

Article 8 of Act No. 27693 states that financial and insurance institutions are among the entities required to report to the Financial Intelligence Unit. Banks are financial institutions. It follows that under article 11 of Act No. 27693 banking institutions, which are required to report and inform, must pay special attention to suspicious and unusual transactions that their clients have carried out or are attempting to carry out.

Under article 20 of the Regulations approved by Supreme Decree No. 163-2002-EF, reporting persons and entities must inform the Financial Intelligence Unit of any suspicious transactions they uncover in the course of their operations, regardless of the amounts involved, within 30 calendar days at most from the date the transactions are detected.

Article 3 of the Regulations provides that the Financial Intelligence Unit is responsible for receiving, centralizing, organizing and analysing the information on suspicious transactions provided by the reporting persons and entities.

Article 9 of the Regulations approved by Supreme Decree No. 163-2002-EF provides that the Prevention and Analysis Section of the Financial Intelligence Unit has the task of analysing the information sent in by reporting persons and entities in order to uncover cases of money- or asset-laundering. Under article 11 of the Regulations the Legal Section is responsible for identifying possible crimes associated with the suspicious transactions that have been analysed.

Since article 8 of Act No. 27693 refers to financial institutions other than banks as being required to provide information to the Financial Intelligence Unit, it follows that the obligation to report suspicious transactions extends to them as well.

Their reports on suspicious transactions are reviewed and evaluated in a similar manner to those of banking institutions.

With regard to the restrictions or regulations, if any, placed on the movement of precious commodities such as gold, diamonds and other related items, it should be noted that in Act No. 27693, article 8, paragraphs 17 and 18, the obligation to report suspicious transactions to the Financial Intelligence Unit is extended to natural or legal persons who deal in antiques, jewellery, precious metals, precious stones, coins, objets d' art and stamps.

In Peru there are no regulations or restrictions applicable to alternate remittance systems such as, or similar to, "hawala", or to charities, cultural organizations or other non-profit organizations engaged in the collection and disbursement of funds for social or charitable purposes. However, Act No. 27693, article 8, paragraph 16, provides that legal persons engaged in mail delivery and courier services are required to report suspicious transactions to the Financial Intelligence Unit. Such funds transfer firms must also have a licence.

Charities, cultural organizations or other non-profit organizations engaged in the collection and disbursement of funds for social or charitable purposes do not come under the supervision of the Superintendency of Banking and Insurance. However, the transactions that such organizations carry out through the financial system are governed by the general rules noted above.

It should be added, however, that Act No. 27693, article 8, paragraph 22, provides that legal persons who receive donations or contributions from third parties are required to report suspicious transactions to the Financial Intelligence Unit.

IV. Travel ban

Under the sanctions regime, all States shall take measures to prevent the entry into or transit through their territories of Listed individuals.

15. **Please provide an outline of the legislative and/or administrative measures, if any, taken to implement the travel ban.**

Under our legislation, the judicial authority is the only authority in Peru competent to order a ban on travel out of the country. Its orders are transmitted to the judicial police for dissemination at the national level and implementation, in conformity with Act No. 27238, entitled "Organic Law on the National Police".

16. **Have you included the names of the Listed individuals in your national "stop list" or border checkpoint list? Please briefly outline steps taken and any problems encountered.**

Yes, please see reply to question 2.

However, problems have been encountered in ensuring the prompt updating of the lists, owing to the lack of adequate technological resources.

Interpol-Lima is currently working on a decentralization project to facilitate smooth coordination with both police and judicial authorities in border areas.

17. **How often do you transmit the updated List to your border control authorities? Do you possess the capability of searching List data using electronic means at all your entry points?**

Each update transmitted by the Committee is immediately forwarded to the competent national authorities. Dissemination at the national level, however, is hampered by technological deficiencies.

18. **Have you stopped any of the Listed individuals at any of your border points or while transiting your territory? If so, please provide additional information, as appropriate.**

Thus far, no one on the list has been identified as attempting to enter the territory of Peru.

19. **Please provide an outline of the measures, if any, taken to incorporate the List in the reference database of your consular offices. Have your visa-issuing authorities identified any visa applicant whose name appears on the List?**

The Ministry of Foreign Affairs has instructed its consular offices abroad to comply with the provisions of resolution 1267 (1999) by denying visas to individuals on the List of the Security Council Committee established pursuant to resolution 1267 (1999), which must be consulted in considering each application for a visa. There was one doubtful case about which the List provided insufficient information and, since the information could not be obtained in a timely manner through the appropriate channels, the visa was not granted.

V. Arms embargo

Under the sanctions regime, all States are requested to prevent the direct or indirect supply, sale and transfer, to Osama bin Laden, members of Al-Qaida organization and the Taliban and other individuals and entities associated with them, from their territories or by their nationals outside their territories of arms and related materiel of all types, including the provision of spare parts and technical advice, assistance, or training related to military activities.

20. **What measures, if any, do you now have in place to prevent the acquisition of conventional arms and weapons of mass destruction (WMD) by Osama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them? What kind of export control do you have in place to prevent the above targets from obtaining the items and technology necessary for weapons development and production?**

Peruvian law prohibits the unlawful possession or ownership, manufacture, storage and supply of weapons (either for civil use or for use in war) and ammunition, bombs, materiel, explosives, etc., which are punishable under article 279 of the Penal Code.[1]

Article 279-B of the Penal Code of Peru[2] also criminalizes and punishes by a term of imprisonment of no fewer than 10 and no more than 20 years any act by an individual who acquires firearms in general, or ammunition, grenades of war or explosives by diverting or pilfering them from members of the armed forces, national police or security services.

With regard to weapons of mass destruction, in addition to those listed in article 279 of the Penal Code (relating to bombs and explosives), article 279-A[3] has also criminalized the production, trade, storage, acquisition, sale, use or possession

[1] Legislation in force, as amended by the First Supplementary Provision to Legislative Decree No. 898 of 27 May 1998.

[2] Article incorporated pursuant to the Second Supplementary Provision to Legislative Decree No. 898 of 27 May 1998.

[3] Article incorporated pursuant to article 5 of Act No. 26672 of 20 October 1996.

of chemical weapons, as well as the transfer to a third party, or the act of encouraging, assisting or facilitating a third party in carrying out the above-mentioned acts, in violation of the provisions of the Chemical Weapons Convention adopted by the United Nations in 1992.

With regard to weapons for civilian use, in addition to the legislation already mentioned, Decree Law No. 25054 of 19 June 1989 regulates the manufacture, trade, possession and use by private individuals of weapons and ammunition not intended for war, as well as the authorization, oversight, infractions, punishment and end-use of such weapons and ammunition. The Directorate for Control of Security Services and Civilian Use of Weapons, Munitions and Explosives (DICSAMEC), of the Ministry of the Interior, is the controlling authority for the above-mentioned purposes.

Under the criminal laws of Peru, terrorism is considered a crime and the law has established the necessary controls to prevent the use, possession or storage of arms and explosives for purposes of terrorism. The following legal provisions may be cited:

(a) Article 2 of Decree Law No. 25475 of 5 May 1992 (Basic Terror): the provoking or creating of terror through acts of violence against protected juridical rights, using for that purpose, inter alia, weapons, materiel or explosive devices, shall constitute the crime of terrorism.

(b) Article 4 of Decree Law No. 25475, of 5 May 1992 (Acts of Collaboration for Purposes of Terrorism): the transfer or utilization of means capable of being used for the storage of weapons or explosives is prohibited (paragraph (b)); the manufacture, acquisition, possession, diversion, storage or supply of weapons, ammunition, or explosive, asphyxiating, inflammable, or toxic substances or objects, or any other kind of substance or object that can cause death or personal injury, are also prohibited. The ownership, possession or concealment of arms, ammunition or explosives that are the property of the armed forces or national police shall be considered an aggravating factor and punished accordingly (paragraph (e)).

(c) Decree Law No. 25707 of 31 August 1992: As part of the strategy to combat subversion, this law regulates the utilization of explosives for civilian and related purposes, with a view to expanding the measures for control of the manufacture, trade, transport, storage, use and destruction of explosive devices for civil use and of inputs that may be used in their manufacture, and establishes multisectoral control mechanisms, procedures, documentation requirements and prohibitions. It also provides that failure to observe the provisions of this Decree Law shall constitute the crime of terrorism.[4]

With regard to ammonium nitrate, there is Legislative Decree No. 846, of 20 September 1996 (published on 21 September 1996), which regulates ammonium nitrate in any of its forms and under any of its names (agricultural, technical and ANFO grade) and its constituent elements. This decree regulates the manufacture, trade, distribution, storage, transport, use and destruction of the above-mentioned explosive substance, as well as its importation, which means that it is therefore

[4] In accordance with article 16 of the above-mentioned legal norm and article 28 of its implementing regulations enacted by Supreme Decree No. 086-92-PCM, of 28 October 1992.

subject to the provisions of Legislative Decree No. 25707, of 31 August 1992, and its implementing regulations.

21. **What measures, if any, have you adopted to criminalize the violation of the arms embargo directed at Osama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them?**

Since this constitutes an act of collaboration with terrorism, it is subject to the provisions of article 4 of Decree Law No. 25475.

22. **Please describe how your arms/arms broker licensing system, if any, can prevent Osama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them from obtaining items under the established arms embargo.**

A legal procedure exists for controlling both the granting of licenses, which are granted only for certain uses,[5] and the import and export of arms, ammunition, accessories and spares. Under this procedure, the oversight bodies (DISCAMEC and, where appropriate, the Armed Forces Joint Command[6]) monitor violations of the provisions of the above-mentioned legal norm, which are punishable by confiscation of the arms and the filing of a criminal complaint with the Office of the Public Prosecutor for the appropriate criminal charges to be brought.[7]

23. **Do you have any safeguards that the weapons and ammunition produced within your country will not be diverted/used by Osama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated?**

Please see reply to question 22.

VI. Assistance and conclusion

24. **Would your State be willing or able to provide assistance to other States to help them implement the measures contained in the above-mentioned resolutions? If so, please provide additional details or proposals.**

Peru is willing to provide assistance to other States in the area of exchange of intelligence.

25. **Please identify areas, if any, of any incomplete implementation of the Taliban/Al-Qaida sanctions regime, and where you believe specific assistance or capacity-building would improve your ability to implement the above sanctions regime.**

The first part of the question does not apply, since the presence of elements of these terrorist organizations has not been encountered in Peru.

[5] Articles 13, 14, 15 and 16 of Act No. 25054.
[6] Articles 20 and 21 of Act No. 25054.
[7] Article 28 of Act. No. 25054.

With regard to the second part of the question, it would be useful to develop programmes of assistance for the equipping and training of officials both in terms of the rules and at the operational level in this field that would, inter alia, promote a greater understanding of these organizations.

Technical assistance is also needed in the form of computer equipment and systems for border checkpoints.

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Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

Note verbale dated 28 October 2003 from the Permanent Mission of Mexico to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Mexico to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities, and has the honour to submit the report prepared by the Government of Mexico in accordance with paragraph 9 of Security Council resolution 1455 (2003) (see annex).

03-58893 (E) 111103 121103

Annex to the note verbale dated 28 October 2003 from the Permanent Mission of Mexico to the United Nations addressed to the Chairman of the Committee

Report of Mexico pursuant to paragraphs 6 and 12 of resolution 1455 (2003)

I. Introduction

1. **Please provide a description of activities, if any, by Osama bin Laden, Al-Qaida, the Taliban and their associates in your country, the threat they pose to the country and the region, as well as likely trends.**

To date, no activities by Osama bin Laden, Al-Qaida, the Taliban or their associates have been detected in Mexico.

II. Consolidated List

2. **How has the 1267 Committee's List been incorporated within your legal system and your administrative structure, including financial supervision, police, immigration control, customs and consular authorities?**

The Ministry of Finance and Public Credit has informed the financial institutions of the contents of the Consolidated List issued by the Committee with a view to identifying any persons or entities with possible links to the groups or persons indicated.

Within the Mexican legal system, aspects relating to suppression of the financing of terrorism are being incorporated into the existing financial laws.

Furthermore, the List is familiar to the Central Offices (intelligence services) and the regional offices of the National Migration Institute — a unit of the Ministry of the Interior — in the states of the Republic, thereby making it possible to prevent effectively the entry to the national territory of any persons whose names appear on the List.

The Institute has taken particular care in reviewing migration documents for nationals of countries from which persons travel only rarely to Mexico for migration or tourism purposes.

The Institute has strengthened measures to control travel at all points of entry (land, sea and air). It thoroughly inspects the documentation of persons wishing to enter Mexican territory through a rigorous scrutiny of the authenticity of the documents and the veracity of the information provided by foreign nationals.

The Institute maintains close communication with other security organs in order to collaborate in detecting acts possibly linked to terrorism.

In addition, the Committee's List has been circulated to the police and consular authorities with a view to incorporating it into the procedures followed by their administrative bodies.

All Mexican diplomatic and consular offices have instructions not to issue a visa to any person whose name is on the List and to inform the Ministry of Foreign Affairs immediately should any person included in the List request a visa.

3. **Have you encountered any problems with implementation with regard to the names and identifying information as currently included in the List? If so, please describe these problems.**

To date, no problem of implementation with regard to the List has been encountered.

4. **Have your authorities identified inside your territory any designated individuals or entities? If so, please outline the actions that have been taken.**

On 1 November 2002, the Mexican Government, by communication S/AC.37/2002/COMM.53/12, transmitted confidential information to the sanctions committee regarding the Consolidated List of individuals and entities associated with Osama bin Laden, Al-Qaida and the Taliban.

5. **Please submit to the Committee, to the extent possible, the names of individuals or entities associated with Osama bin Laden or members of the Taliban or Al-Qaida that have not been included in the List, unless to do so would compromise investigations or enforcement actions.**

On 1 November 2002, the Mexican Government, by communication S/AC.37/2002/COMM.53/12, transmitted confidential information to the sanctions committee relating to the Consolidated List of individuals and entities associated with Osama bin Laden, Al-Qaida and the Taliban.

6. **Have any listed individuals or entities brought a lawsuit or engaged in legal proceedings against your authorities for inclusion in the List? Please specify and elaborate, as appropriate.**

No listed individuals have brought a lawsuit or engaged in legal proceedings against the Mexican judicial authorities.

7. **Have you identified any of the listed individuals as nationals or residents of your country? Do your authorities have any relevant information about them not already included in the List? If so, please provide this information to the Committee as well as similar information on listed entities, as available.**

On 1 November 2002, the Mexican Government, by communication S/AC.37/2002/COMM.53/12, transmitted confidential information to the sanctions committee relating to the Consolidated List of individuals and entities associated with Osama bin Laden, Al-Qaida and the Taliban.

8. **According to your national legislation, if any, please describe any measures you have taken to prevent entities and individuals from recruiting or supporting Al-Qaida members in carrying out activities inside your country, and to prevent individuals from participating in Al-Qaida training camps established in your territory or in another country.**

In Mexico there is no separate legal category that criminalizes the recruitment of members of terrorist groups. However, those participating in the crime of terrorism may be punished under the provision contained in article 13, paragraphs V and VI, of the Federal Penal Code, which establishes that those who wilfully cause

another person to commit the crime or those who aid or abet another person in committing the crime are accomplices to that crime. When the crime is committed by three or more persons, the person who does the recruiting may be punished as a participant in organized crime under the provisions of article 2 of the Federal Organized Crime Act. If no organization of the crime is involved, this would be considered as a crime of unlawful association, and the person who does the recruiting may be punished as a participant in the crime of unlawful association provided for in article 164 of the Federal Penal Code.[1]

On the basis of the foregoing, unless it is proved that the crime of terrorism was attempted or carried out and that the person in question participated in it, the recruitment of members of terrorist groups is not a punishable offence. That is why the specific category of recruitment of members of criminal groups is included in the package of legislative reforms currently under consideration by the Congress of the Union.

III. Financial and Economic Assets Freeze

Under the sanctions regime (paragraph 4 (b) of resolution 1267 (1999) and paragraphs 1 and 2 (a) of resolution 1390 (2002)), States are to freeze without delay the funds and other financial assets or economic resources of the listed individuals and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, assets or resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory.

The Ministry of Finance and Public Credit (SHCP) has disseminated the lists of persons and entities linked to terrorism elaborated by the Security Council within the financial sector, in order to prevent the use of financial institutions by such persons or organizations in any act or activity that might be linked to terrorism.

The reporting systems for the prevention and detection of operations involving resources derived from illicit sources, set up in 2002, may be used by financial institutions to identify, in the same way, operations or acts that might be associated with terrorist organizations or activities. There is even the possibility of alerting the relevant countries or authorities in good time to accounts or repeated transfer of funds for such purposes.

It should be noted that Mexican legislation provides for the seizure and forfeiture of property derived from any illicit activity, without reference to specific legal categories or concepts. In addition, SHCP has the power to freeze funds immediately on the basis of a judicial order.

SHCP has signed mutual cooperation agreements with several countries, notably the United States of America, Canada and France. The exchange of information is conducted through the Division for Investigation of Operations,

[1] For additional information, see the first report of Mexico pursuant to Security Council resolution 1373 (2001) (S/2001/1254), especially the part relating to para. 2 (a) of the resolution.

acting as the Financial Intelligence Unit, which in turn gathers and analyses reports of unusual, exceptional or suspicious operations.

It may be pointed out that there are also supervisory bodies to oversee proper compliance with the regulations in force, including the National Banking and Securities Commission, the National Insurance and Guarantees Commission and the National Commission on the Retirement Savings System.

Currently, the legislation against money-laundering is applicable to the following entities, which make up the Mexican financial system: credit institutions, limited-scope finance companies, exchange bureaux, securities dealers, insurance institutions, financial institutions and pension-fund administrators.

9. **Please describe briefly:**

- **The domestic legal basis to implement the asset freeze required by the resolutions above.**

The following legal provisions are derived from article 22 of the Constitution of the United Mexican States.

Article 29 of the Federal Organized Crime Act provides that, where sufficient evidence exists that a person is a member of organized crime (including terrorist organizations), the Public Prosecutor's Office, with prior judicial authorization, may seize (freeze) the assets of that persons, together with any assets in which he or she has an interest, the onus being on those holding such assets to prove that they were lawfully acquired.

Article 40 of the Federal Penal Code provides that the instruments of the crime, and/or any items that constitute an object or product of the crime, shall be forfeited if their use is prohibited. If they may legally be used, they shall be forfeited if the crime was intentional. If they belong to a third party, they shall be forfeited only if the third party who controls them or has acquired title to them is subject to one of the conditions referred to in article 400 of the Penal Code (complicity), regardless of the juridical nature of the third party — owner or possessor — and of his or her relationship with the offender, if any.

The above-mentioned article provides as a precautionary measure that the competent authorities shall immediately seize (freeze) assets that could be subject to forfeiture during the preliminary investigation or the trial.

Article 181 of the Federal Code of Criminal Procedure provides that the instruments, objects or products of the crime, as well as property for which there are indications that it is or may be linked to the crime, shall be seized (frozen) by the competent authority (Public Prosecutor's Office or jurisdictional authority) with a view to ensuring that the property is not altered, destroyed or hidden.

The power to confiscate or freeze assets vested in the federal authorities by the above-mentioned provisions is not limited by the nature of such assets; they include personal property, buildings, financial assets (bank accounts, securities, etc.) and economic resources.[2]

[2] See the first report of Mexico pursuant to Security Council resolution 1373 (2001) (S/2001/1254), especially the part relating to para. 1 (c) of the resolution.

- **Any impediments under your domestic law in this context and steps taken to address them.**

Up to now there have been none.

10. **Please describe any structures or mechanisms in place within your Government to identify and investigate Osama bin Laden, Al-Qaida or Taliban-related financial networks, or those who provide support to them or individuals, groups, undertakings and entities associated with them within your jurisdiction. Please indicate, as appropriate, how your efforts are coordinated nationally, regionally and/or internationally.**

Mexican government offices, including the Ministry of Finance and Public Credit (SHCP), the Ministry of Foreign Affairs and the Office of the Attorney-General of the Republic, work jointly on reporting situations that could be related to acts, individuals or entities associated with terrorism or its financing.

SHCP prepares secondary regulations and authorizes operations manuals for financial intermediaries.

The Division for Investigation of Operations is a unit of SHCP that receives reports and analysis of exceptional, unusual and suspicious operations.

Likewise, the national monitoring commissions under SHCP require financial intermediaries to provide up-to-date financial information about their operations.

All the above-mentioned structures take the necessary steps to arrange for provisions or reforms of Mexican legislation in order to comply with agreements or requirements previously established with international bodies, including with regard to terrorist acts or the financing of terrorism. The purpose of these steps is to provide a legal framework for regulating any unlawful acts committed against the State itself or against another Member State.

11. **Please convey the steps banks and/or other financial institutions are required to take to locate and identify assets attributable to, or for the benefit of, Osama bin Laden or members of Al-Qaida or the Taliban, or associated entities or individuals. Please describe any "due diligence" or "know your customer" requirements. Please indicate how these requirements are enforced, including the names and activities of agencies responsible for oversight.**

The national financial system has tools for identifying customers in order to delve more deeply into the origin of their assets. In particular, to open accounts or make contracts or even to carry out operations with customers and users, financial entities require the information and documents listed in the following table to be submitted:

	Type of person			
	Natural		*Legal*	
Requirements	*Mexican*	*Foreign*	*Mexican*	*Foreign*
Valid official identification document (with signature, photograph and address)	X	X	X	X
Proof of address	X	X	X	X
Federal Taxpayers Registration and Tax Identification Numbers	X	X	X	X
Single Population Register Code	X			
Notarized powers of attorney	X	X	X	X
Attestation of incorporation			X	
Passport/immigration status		X		
Attestation of legal existence				X

The legal framework is primarily constituted by:

- Federal Tax Code;
- Federal Penal Code, article 139;
- Federal Organized Crime Act, articles 2, 4, 9, 43 and 44;
- Credit Institutions Act, article 115;
- Securities Market Act, article 52 bis 4;
- General Act on Credit Organizations and Related Activities, article 95;
- General Act on Mutual Insurance Institutions and Companies, article 140;
- Federal Act on Guarantee Institutions, article 112;
- Act on Investment Firms, article 91;
- Act on Savings and Loan Associations, article 124;
- Basic Law on Rural Finance, article 124;
- General Rules establishing measures and procedures for preventing, detecting and controlling acts or operations by pension-fund administrators that may come under the provisions of article 400 bis of the Federal Penal Code.

Mexican financial institutions determine which operations are to be reported as unusual, in accordance with the criteria established in the operations manuals authorized by SHCP. In addition, note that Mexican financial regulations on the prevention of operations funded by the proceeds of illegal activities uses the term "unusual operation" rather than "suspicious transaction".

The Division for Investigation of Operations, in the Ministry of Finance and Public Credit, acts as Mexico's Financial Intelligence Unit (as defined by the Egmont Group) and is responsible for analysing the reports transmitted by financial institutions. Where necessary, it determines whether there is a well-founded

suspicion of money-laundering or other criminal activity that should be reported to the Office of the Attorney-General of the Republic.

Mexican financial institutions and those constituted under Mexican law are required, under the acts and provisions by which they are governed, to comply with "know your customer" procedures and the suspicious transactions reporting system in accordance with the criteria set out in the operations manuals authorized by SHCP. Note that all financial institutions constituted in the national territory, irrespective of the origin of their capital, are considered for all intents and purposes as Mexican or national financial institutions.

These manuals provide that, in order to characterize an operation as unusual, these institutions must consider, inter alia, the following:

(1) The specific circumstances and background of each of their customers, i.e., occupation, line of business or corporate purpose;

(2) The amounts of the operations they commonly carry out, their relationship to the activities referred to in the previous paragraph, the type of funds transfer that the customer usually makes and the currency or other medium in which it is made;

(3) Prevailing commercial and banking customs and practices in the market in which they operate;

(4) Unusually high amounts, complexity and atypical patterns of transactions without apparent economic or lawful cause;

(5) Multiple or separate amounts that, added together, equal or exceed the equivalent of US$ 10,000;

(6) Instances where natural or legal persons refuse to provide identification documents, submit false information, seek to evade the established reporting requirements, attempt to bribe or intimidate employees of the institutions in order to obtain their cooperation in carrying out operations or contravening the regulations that prevent them, or where there are doubts as to the identity of the beneficial owner of the funds.

Mexican financial institutions or those constituted under Mexican law must, to the extent possible, examine the background and purpose of unusual operations and put the results of their examination in writing.

In characterizing any operation, financial institutions must also refer to the following principles:

"**Know Your Customer.**" The application of this principle makes it possible to know the specific circumstances of each customer (natural and legal persons), such as occupation, line of business or corporate purpose.

Inconsistency. This element is normally present in any unusual operation, since there is usually an inconsistency between the operation and the customer's activities.[3]

[3] See the second report of Mexico pursuant to Security Council resolution 1373 (2001) (S/2002/877), especially questions 3 and 4 relating to para. 1 (a) of the resolution.

Likewise, the purpose of the National Banking and Securities Commission is, within its area of competence, to oversee and regulate financial institutions so as to ensure their stability and proper functioning, and to maintain and promote the sound and balanced development of the financial system as a whole in order to protect the interests of the public.

The above-mentioned Commission is charged with inspection and oversight of the following entities: companies controlling financial groups, credit institutions, stockbrokerages, securities specialists, stock exchanges, investment firms, bonded warehouses, credit unions, financial lessors, financial factoring companies, savings and loan associations, exchange bureaux, limited-scope finance companies, securities-deposit institutions, clearing houses, securities ratings institutions, credit-information bureaux, persons operating as savings and loan associations, and other public institutions and trusts carrying out financial activities, with respect to which the Commission has oversight powers.

The National Insurance and Guarantees Commission and the National Commission on the Retirement Savings System share the same goals and responsibilities in respect of the financial sector which they oversee and monitor. The former is responsible for overseeing mutual insurance companies and guarantee institutions, while the latter supervises pension-fund administrators.

12. **Resolution 1455 (2003) calls on Member States to provide "a comprehensive summary of frozen assets of listed individuals and entities". Please provide a list of the assets that have been frozen in accordance with this resolution. This list should also include assets frozen pursuant to resolutions 1267 (1999), 1333 (2001) and 1390 (2002). Please include, to the extent possible, in each listing the following information:**

- **Identification(s) of the person or entities whose assets have been frozen;**
- **A description of the nature of the assets frozen (i.e., bank deposits, securities, business assets, precious commodities, works of art, real estate property, and other assets);**
- **The value of assets frozen.**

On 1 November 2002, the Mexican Government, by communication S/AC.37/2002/COMM.53/12, transmitted confidential information to the sanctions committee regarding the Consolidated List of individuals and entities associated with Osama bin Laden, Al-Qaida and the Taliban.

13. **Please indicate whether you have released pursuant to resolution 1452 (2002) any funds, financial assets or economic assets that had previously been frozen as being related to Osama bin Laden or members of the Al-Qaida or the Taliban or associated individuals or entities. If so, please provide reasons, amounts unfrozen or released and dates.**

No movement has been recorded in Mexico relating to the unfreezing of funds, financial assets or economic assets that had previously been frozen.

14. **Pursuant to resolutions 1455 (2003), 1390 (2001), 1333 (2000) and 1267 (1999), States are to ensure that no funds, financial assets or economic resources are made available, directly or indirectly, to listed individuals or entities or for their benefit, by nationals or by any persons within their**

territory. Please indicate the domestic legal basis, including a brief description of laws, regulations and/or procedures in place in your country to control the movements of such funds or assets to designated individuals and entities. This section should include a description of:

– **The methodology, if any, used to inform banks and other financial institutions of the restrictions placed upon individuals or entities listed by the Committee, or who have otherwise been identified as members or associates of Al-Qaida or the Taliban. This section should include an indication of the types of institutions informed and the methods used.**

The Ministry of Finance and Public Credit (SHCP) has made available to financial institutions the lists of individuals and entities issued by the United Nations Security Council, in particular the lists prepared by the Security Council Committee established by resolution 1267 (1999) concerning Afghanistan, and those provided by the Government of the United States of America under its cooperation agreements, which contain the names of individuals and entities allegedly linked to terrorist activities.

The National Banking and Securities Commission, by official letter, has requested the Mexican Bankers Association, the Mexican Association of Limited-Scope Finance Companies, the Mexican Securities Dealers Association and the Mexican Exchange Bureaux Association to draw to the attention of their affiliates the lists in question, and recommendations are being formulated to the effect that these financial institutions should take special care and, where appropriate, report any operations they uncover that may have been carried out by the entities or individuals on the above-mentioned lists to the Division for Investigation of Operations, a unit of SHCP.

The National Insurance and Guarantees Commission and the Commission on the Retirement Savings System issue an official bulletin to the institutions which they oversee containing the lists of natural or legal persons linked to the financing of terrorism, and these institutions in turn inform their own communications and control committees of any operations that may be pertinent to the matter and examine each case in depth. Where appropriate, the reports are forwarded to the Financial Intelligence Unit, which will analyse the operations and transmit its opinion on the case, if necessary, to the competent authorities.

The financial institutions will refer any case they deem appropriate to the Financial Intelligence Unit through the relevant oversight commission; the Financial Intelligence Unit will analyse these operations and transmit its opinion on the case to the competent authorities.

Likewise, SHCP is taking steps to encourage all financial intermediaries to take every precaution to prevent the Mexican financial sector from being used by individuals or entities that finance, attempt to finance or are connected in any way to terrorist activities. In order to assist financial institutions in uncovering operations intended to finance terrorism, the financial authorities are preparing guidelines to fortify those institutions' ability to evaluate customers, and to provide them with better indicators for restricting services to certain individuals or entities.[4]

[4] See the first report of Mexico pursuant to Security Council resolution 1373 (2001) (S/2001/1254), especially the part relating to para. 1 (d) of the resolution.

- **Required bank-reporting procedures, if any, including the use of Suspicious Transaction Reports (STR), and how such reports are reviewed and evaluated.**

See the reply to question 11 in this report, particularly, the part pertaining to the supplementary report of Mexico submitted pursuant to Security Council resolution 1373 (2001) (S/2002/877), especially questions 1, 3 and 4, relating to paragraph 1 (a) of the resolution.

- **Requirements, if any, placed on financial institutions other than banks to provide STR, and how such reports are reviewed and evaluated.**

See the reply to question 11 in this report, particularly the part pertaining to the supplementary report of Mexico submitted pursuant to Security Council resolution 1373 (2001) (S/2002/877), especially questions 1, 3 and 4, relating to paragraph 1 (a) of the resolution.

- **Restrictions or regulations, if any, placed on the movement of precious commodities such as gold, diamonds and other related items.**

There are no special regulations on the trade in precious commodities or diamonds. Most of these products are not subject to tariff regulations or restrictions, such as licences, official rules, etc. The tariff payable on the import of such items ranges from 0 to 23 per cent.

Article 9 of the Customs Act requires anyone carrying an amount in cash, national or foreign cheques, payment orders or any other payment instrument or a combination thereof that exceeds US$ 10,000 or its equivalent in the currency in question to declare it to the customs authorities upon entering or leaving Mexico.

- **Restrictions or regulations, if any, applicable to alternate remittance systems such as — or similar to — "hawala", as well as on charities, cultural and other non-profit organizations engaged in the collection and disbursement of funds for social or charitable purposes.**

A draft bill is being prepared to effectively regulate non-profit and charitable organizations in order to comply with various international requirements and supplement the national financial controls designed to prevent illegal activities.

IV. Travel Ban

Under the sanctions regime, all States shall take measures to prevent the entry into or transit through their territories of Listed individuals (paragraph 1 of resolution 1455 (2003), paragraph 2 (b) of resolution 1390 (2002)).

15. **Please provide an outline of the legislative and/or administrative measures, if any, taken to implement the travel ban.**

Border controls

The National Migration Institute has taken particular care in reviewing migration documents for nationals of countries from which persons travel only rarely to Mexico for migration or tourism purposes.

The issuance of documents for migration purposes is subject to the previous granting of an entry permit or a change in migratory status and/or characteristics; this entails a thorough analysis of the particulars of the foreign national before he can be permitted to enter or remain in Mexico. When the migration papers are issued, a series of official and security stamps are affixed (embossed stamp), as are the handwritten signatures of the authorizing officials.

Mexico has a total of 172 points of entry: 55 by land, 59 by sea and 58 by air. The National Migration Institute has migration officers permanently on duty at all those points, in order to prevent the entry of foreigners intending to use Mexican territory to carry out actions harmful to national security. Migration officials, together with the Federal Preventive Police, are authorized to carry out verification and monitoring duties.

At all points of entry, the Institute thoroughly inspects the documentation of persons wishing to enter Mexican territory. It has also set up a series of courses to train migration officials to detect forged documents. The Institute carries out the inspection of migration documents at points of entry as follows:

- The migration officer asks the foreigner for his or her documents, namely: a valid passport, migration papers and, where the person's nationality requires it, a Mexican visa and consular stamp. In addition, where the person is entering by air, the official checks that the person arriving has a ticket to return to his or her country of origin.

- The foreigner is interviewed in order to determine the reason for entering the country and his or her plans for staying in Mexico. In particular, the person is asked how long he or she intends to stay in the country, unless it is already specified in advance by a visa or consular stamp; the person is also asked which places he or she intends to visit. The official further determines whether the foreigner is financially solvent and what type of activities he or she intends to engage in.

- If the migration official authorizes the foreign national to enter, this concludes the procedure. If the official decides that a more thorough investigation is required, the foreign national is then interviewed by the duty supervisor who in turn reviews the facts.

- This second review is carried out by the Supervisor, sometimes in the presence of the Deputy Director of Local Operations; all documents in the person's possession are thoroughly examined.

If the Institute has the necessary information, it can decide at its border-control points whether foreign nationals should be granted or refused entry, even if for some reason the foreign national has previously been granted an entry permit and/or possesses a Mexican visa or consular stamp. These checks provide the information necessary to prevent the movement of criminals, such as terrorists.

The Institute also trains airline ground personnel in the detection of forged documents. Thus, the airlines are the first line of defence in the detection of foreign nationals attempting to enter the country illegally.

The Institute, the Ministry of Defence, the Ministry of the Navy, the Attorney-General's Office and the Federal Preventive Police maintain ongoing cooperation, within their respective spheres of competence, in the verification and permanent

monitoring of the movement of persons and organizations connected with terrorist acts.

In addition, the Institute, the General Customs Administration, the Centre for Investigations and National Security, the Ministry of Foreign Affairs and the Attorney-General's Office, in coordination with the Customs Bureau of the Department of Homeland Security of the United States of America, have joined forces in order to implement the Advanced Passenger Information System (APIS) in Mexico. The purpose of APIS is to centralize the available information which falls within the parameters of terrorism and cross-check it with the passenger information of airlines flying between Mexico and the United States in order to provide timely warnings of probable links to terrorist-related organizations or actions and enable the participating agencies to take the necessary steps.

In the bilateral sphere, Mexico has established cooperation regimes with the United States (U.S.-Mexico Smart Border Partnership) and Guatemala (Memorandum of Understanding concerning Cooperation to Safeguard Security on the Border between the Two Countries), in which the fight against terrorism is one of the areas receiving attention on a priority basis. A similar instrument is being negotiated with Belize.

In this framework, information-exchange programmes have been strengthened in order to improve the inspection procedures at points of entry to and departure from the country; this will help to prevent and, where necessary, detect the entry and/or transit of persons linked to terrorist groups.

16. **Have you included the names of the listed individuals in your national "stop list" or border checkpoint list? Please briefly outline steps taken and any problems encountered.**

The list has been disseminated to the regional offices of the National Migration Institute.

The Institute distributes at border ports, on an ongoing basis, migration-alert lists which include the names of individuals covered by the various sanctions regimes established by the Security Council and its committees.

17. **How often do you transmit the updated List to your border control authorities? Do you possess the capability of searching List data using electronic means at all your entry points?**

The List is transmitted to the regional offices whenever the Committee sends out notices of updates.

While the capability of searching List data using electronic means does not currently exist at all entry points, the Institute is developing the Integrated Migration Operating System, which will provide the Government of Mexico with this capability in the short term, as described in the following table:

Entry point	*First stage September 2003*	*Second stage August 2004*	*Third stage February 2005*
Air	84.3%	92.2%	96.9%
Sea	80.8%	91.5%	97.2%
Land	80.2%	93.1%	96.6%

18. **Have you stopped any of the listed individuals at any of your border points or while transiting your territory? If so, please provide additional information, as appropriate.**

To date there have been no stops of listed individuals.

19. **Please provide an outline of the measures, if any, taken to incorporate the List in the reference database of your consular offices. Have your visa-issuing authorities identified any visa applicant whose name appears on the List?**

Please see the reply to question 2 in this report. To date none of the listed individuals has applied for a Mexican visa.

V. Arms Embargo

Under the sanctions regime, all States are requested to prevent the direct or indirect supply, sale and transfer, to Osama bin Laden, members of Al-Qaida organization and the Taliban and other individuals and entities associated with them, from their territories or by their nationals outside their territories of arms and related materiel of all types, including the provision of spare parts and technical advice, assistance, or training related to military activities (paragraph 2 (c) of resolution 1390 (2002) and paragraph 1 of resolution 1455 (2003)).

20. **What measures, if any, do you now have in place to prevent the acquisition of conventional arms and weapons of mass destruction (WMD) by Osama bin Laden members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them? What kind of export control do you have in place to prevent the above targets from obtaining the items and technology necessary for weapons development and production?**

The Ministry of Public Security of the Federal Government, through its Federal Preventive Police Decentralized Administrative Unit (Intelligence Coordination for Prevention), has entrusted the General Directorate of Trafficking and Contraband with responsibility for investigating and neutralizing activities involving the illegal transit of arms which could be used by organized crime and by disruptive, subversive or terrorist groups. The Administrative Unit maintains permanent liaison with the specialized staff of the Ministry of Defence, the Ministry of the Navy and the Centre for Investigations and National Security. The General Directorate of Trafficking and Contraband conducts field research and desk studies aimed at preventing situations arising out of the legal and illegal arms trade that may pose a risk to public security. It also maintains an accurate and updated record of arms shipments seized in the national territory.

In the case of supply of weapons and explosives to terrorist groups, the Federal Firearms and Explosives Act regulates, through strict controls, the sale, possession, transport, import and export of firearms and explosives in Mexican territory.

This Act does not explicitly make it a crime to supply weapons to terrorists as such, but it does penalize the stockpiling, possession, import and export of firearms and explosives without a licence or permit issued by the Ministry of Defence. Articles 84, 84 bis and 84 ter of the Federal Firearms and Explosives Act prohibit

the illegal importation into the national territory of weapons, ammunition, cartridges, explosives and controlled substances and impose penalties of from 3 to 30 years' imprisonment.

In addition, articles 160 and 162 of the Federal Penal Code impose penalties of between three months' and three years' imprisonment or a fine equivalent to the forfeiture of 180 to 360 days' general minimum wage on any person who illicitly carries, manufactures, imports or stockpiles instruments which may be used solely for attack purposes and have no work-related or recreational application.

In addition, the Federal Organized Crime Act characterizes as organized crimes the arms stockpiling and trafficking referred to in articles 83 bis and 84 of the Federal Firearms and Explosives Act.

With regard to combating the supply of biological weapons, article 455 of the Health Act imposes a penalty of one to eight years' imprisonment and a fine equivalent to 100 to 2,000 days' general minimum wage on any person who, in the absence of a licence from the competent health authorities or in contravention of the terms under which such licence was issued, imports, possesses, isolates, cultivates, transports, stores or, in general, performs any action using pathogenic agents or their vectors, where these are highly dangerous to human health, in accordance with the Official Mexican Standards issued by the Ministry of Health.

With respect to the supply of chemical weapons, article 456 of the above-mentioned Act imposes a penalty of one to eight years' imprisonment and a fine equivalent to 100 to 2,000 days' general minimum wage on any person who, in the absence of a licence from the Ministry of Health or in contravention of the terms under which such licence was issued, prepares, imports into the national territory, transports, distributes, sells, stores, possesses, disposes of or, in general, performs any action using the toxic or dangerous substances referred to in the Act and resulting in an immediate risk to human health.

Mexico is a party to the following international instruments, which are applicable to the prevention of the supply of weapons to terrorists:

- Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (ratified 11/2/1982), and three of its Protocols:
  - Protocol I. Protocol on Non-Detectable Fragments (ratified 11/2/1982);
  - Protocol III. Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (ratified 11/2/1982);
  - Protocol IV. Protocol on Blinding Laser Weapons (ratified 10/3/1998);
- Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (ratified 1/6/1998);
- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (ratified 29/8/1994);
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (ratified 8/4/1974);

- Convention on the Physical Protection of Nuclear Material (ratified 4/4/1988);
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementary to the United Nations Convention against Transnational Organized Crime (ratified 10/4/2003).

The competent authorities are taking the following specific steps to prevent the illicit trafficking of weapons:

- Military personnel appointed by the Ministry of Defence and seconded by the corresponding military zone inspect the import or export of firearms, explosives and related chemical substances, checking that the material being imported or exported corresponds exactly to the quantities and characteristics specified in the licences issued by that Ministry;
- Military personnel inspect vehicles authorized to transport firearms, explosives and related chemical substances to check, during the transferral, that such material is the same as that licensed to be transported;
- When the material arrives at the facilities or magazines of the enterprises that have purchased it, the respective Territorial Command appoints military personnel to take control of and verify the delivery or removal of the weapons, ammunition and explosive material or related chemical substances, again checking the quantities and characteristics of the material authorized;
- The Ministry of Defence and the Ministry of the Navy, in coordination with authorities at the three levels of government and with the private sector, carry out the following: ongoing campaigns to control the possession, carrying and use of firearms through coordination meetings with the authorities involved; radio and television publicity campaigns to raise public awareness; campaigns to promote the registration and surrender of weapons, ammunition and explosives; and publication of the results.[5]

The General Customs Administration has instructed customs administrators throughout the country to strengthen the security measures to be followed in connection with the export or import of chemical or biological products, weapons, ammunition and hazardous substances, and with irregular or unusual operations. In all operations or movements of persons that pose a risk, any goods being transported are inspected; the luggage of passengers arriving on international flights and/or departing for the United States is X-rayed, and gamma ray scanners are used to check every single export and import shipment by rail at the northern border. Coordination with the local authorities is routine, so that appropriate action can be taken immediately to deal with any out-of-the-ordinary occurrence. The Administration coordinates with the Customs and Border Protection Bureau to inspect passengers and cargo shipments. If there is any indication of danger at the northern or southern borders, members of the Police and Customs Inspection Support Unit are deployed, in coordination if necessary with the military garrison of the Ministry of Defence; in the case of maritime customs, in coordination with the Ministry of the Navy; in the case of the airports in Mexico City, Guadalajara and Monterrey, with the Ministry of Defence, the Federal Preventive Police and the

[5] See the report of Mexico pursuant to Security Council resolution 1373 (2001) (S/2001/1254), especially the part relating to para. 2 (a) of the resolution.

National Migration Institute; and in the case of Cancún, with the Ministry of the Navy or the Ministry of Defence and the National Migration Institute.

21. **What measures, if any, have you adopted to criminalize the violation of the arms embargo directed at Osama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them?**

The Federal Penal Code does not make the violation of the arms embargo a separate crime.

22. **Please describe how your arms/arms broker licensing system, if any, can prevent Osama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them from obtaining items under the established arms embargo.**

In Mexico, the legal provisions governing controls over the regular sale of firearms and explosives are in article 10 of the Constitution and articles 4, 7, 17, 37, 38, 40, 41, 43, 48-53, 55, 56, 68-70 and 73 of the Federal Firearms and Explosives Act; the administrative provisions are to be found in article 48, paragraph V, of the corresponding regulations.

The controls applicable to the sale of firearms and explosives are as follows:

(1) Under article 4 of the Federal Firearms and Explosives Act, control of all weapons in the country, for which a federal weapons registry is to be maintained, is the responsibility of the executive branch, acting through the Ministry of Defence, in accordance with the respective powers entrusted to them by that Act and the corresponding regulations;

(2) The control referred to in article 4 is the exclusive responsibility of the Ministry of Defence;

(3) For that purpose, any individual or legal person, public or private, submits an application for authorization to sell firearms or explosives, which is granted provided that the legal requirements have been met;

(4) Once a general sales licence is issued, the holder submits a monthly report on sales activities and is also obliged to make the necessary arrangements for inspections by the Ministry of Defence;

(5) A holder of a general sales licence who sells a firearm or explosives must require the customer to produce identification and a special permit issued by the Ministry of Defence for the purchase of the item in question, and must record the sales transaction in the appropriate ledger;

(6) Persons purchasing firearms or explosives on the black-market must be reported to the Attorney-General's Office for violation of the Federal Firearms and Explosives Act. Such purchases are punishable by imprisonment and the applicable fine, and by confiscation of the firearms or explosives;

(7) Currently, no licences are issued to individuals for the sale of firearms;

(8) Such sales, in strict compliance with the applicable law, are the sole prerogative of the Arms and Munitions Trade Unit of the Department of Military Industry (previously Department of Manufacturing) in the Ministry of Defence.[6]

To ensure that agencies and individuals are complying with the laws governing the sale of arms and ammunition, they must without exception produce the documentation required by law.

23. **Do you have any safeguards that the weapons and ammunition produced within your country will not be diverted/used by Osama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated?**

Armaments are produced in Mexico solely to meet the needs of the national Armed Forces. Only a tiny percentage of the ammunition sold is intended for hunting or marksmanship and that is sold by specialized enterprises which have the necessary licences and are subject to their restrictions.

Mexico has in place the legal, commercial and administrative controls that enable it to ensure that weapons and ammunition are not being diverted to illegal users.

VI. Assistance and conclusion

24. **Would your State be willing or able to provide assistance to other States to help them implement the measures contained in the above-mentioned resolutions? If so, please provide additional details or proposals.**

Yes, provided that a specific request is made by a Government and that it conforms to the provisions of the Mexican legal system.

25. **Please identify areas, if any, of any incomplete implementation of the Taliban/Al-Qaida sanctions regime, and where you believe specific assistance or capacity-building would improve your ability to implement the above sanctions regime.**

The Government of Mexico is complying strictly with the provisions of Security Council resolution 1455 (2003), and has accordingly adopted the measures indicated in paragraph 5. Thus far, it has had no problem whatsoever in implementing the resolution.

26. **Please include any additional information you believe pertinent.**

There are no additional comments to be made.

[6] See the report of Mexico pursuant to Security Council resolution 1373 (2001) (S/2002/877), especially question 12 relating to para. 2 (a) of the resolution.

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Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

Note verbale dated 5 November 2003 from the Permanent Mission of Nicaragua to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Nicaragua to the United Nations presents its compliments to the secretariat of the Security Council Committee established pursuant to resolution 1267 (1999) and transmits herewith the official report of the Government of Nicaragua pursuant to Security Council resolution 1455 (2003) (see annex).

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Annex to the note verbale dated 5 November 2003 from the Permanent Mission of Nicaragua to the United Nations addressed to the Chairman of the Committee

Report of the Government of the Republic of Nicaragua submitted in compliance with Security Council resolution 1455 (2003)

One of the strategic missions of the Government of the Republic of Nicaragua is to "convert the country into a real political ally — responsible, reliable and constant — of the democratic nations of the world in the fight against terrorism, drug trafficking and money-laundering".[1]

It should be emphasized that although Nicaragua has not been a direct victim of international terrorism, it has shown firm determination in combating this scourge at the national, regional and international levels; it has condemned energetically the acts that occurred in the United States of America on 11 September 2001 and has expressed its solidarity with the victims' families and the United States Government.

In response to the request from the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999), the Government of Nicaragua is presenting an updated report on steps taken to implement the measures outlined in paragraph 4 (b) of resolution 1267 (1999), paragraph 8 (c) of resolution 1333 (2000) and paragraphs 1 and 2 of resolution 1390 (2002).

Report of the Government of Nicaragua

Nicaraguan legal provisions do not permit the freezing of funds or financial assets and other resources merely on the grounds of suspected participation in terrorist activities. However, under domestic legislation, the financing of terrorism is included among money-laundering offences, in accordance with the provisions of Act No. 285 on Narcotic Drugs, Psychotropic Substances and other Controlled Substances and Laundering of Money and Assets Deriving from Illicit Activities which, in article 65 (a), establishes the following:

> "Any person who either directly or through a natural or legal person carries out with other persons or with establishments of a banking, financial, commercial or any other nature, commercial transactions and operations derived from or preceding illicit activities commits the offence of money-laundering".

The Code of Criminal Procedure also sets out a procedure in this respect. As for the procedure for freezing the funds of persons suspected of financing terrorist activities, a judicial authority may order, directly or through the Superintendency of Banks, the freezing or blocking of the accounts of persons accused or convicted in connection with any illicit activity, including terrorism-related activities.

The details of operations effected through such accounts — or others that are not frozen — may be provided to the competent authorities for the purposes of investigating or bringing charges, either by means of a simple request of the Attorney-General of the Republic to the Superintendent of Banks, or once the judicial authority orders the lifting of bank or financial secrecy. The following

[1] Excerpt from the inaugural address of the President of the Republic of Nicaragua, Enrique Bolaños Geyer, 10 January 2002.

provisions empower the judicial authorities to order the freezing of accounts as a preventive measure during proceedings:

- Article 167 of the Political Constitution;
- Article 12 of Act No. 260: "Organic Act on the Judiciary";
- Article 109 of Act No. 314: General Act on Banks, Financial Institutions Other than Banks and Financial Groups;
- Article 167, subparagraphs 2 (c), (d) and (e) of Act No. 406 establishing the Code of Criminal Procedure, which states: "genuine precautionary measures include: ... (c) the freezing of bank accounts, share certificates and bonds; (d) preventive sequestration or seizure; (e) the placing of companies in administration".

In principle, the judicial procedure for freezing funds is identical for both terrorism and money-laundering. However, in the latter case, it may also be preceded by the transmission of a **suspicious transaction report** from a bank to the Superintendency of Banks, in accordance with the provisions of Act No. 285 and the Regulation for the Prevention of the Laundering of Money and Other Assets Applicable to all Financial Institutions under the Supervision of the Superintendency of Banks and Other Financial Institutions, which stipulates that banks and other financial institutions should provide information on any transaction suspected of being linked to money-laundering or which departs from the normal pattern associated with the account in question.

The Superintendency of Banks and Other Financial Institutions immediately transmits such reports to the Financial Analysis Commission chaired by the Attorney General. In conjunction with circulars containing lists of the names of persons and entities allegedly linked to terrorism, such reports could contribute to detecting transactions which may be associated with the misappropriation of funds for terrorist activities, either because the recipient of the funds has links to suspicious persons or entities, or because subsequent investigations uncover evidence to that effect.

The above-mentioned Financial Analysis Commission, provided for in article 23 of Act. No. 285, entitled "Act on Narcotic Drugs, Psychotropic Substances and other Controlled Substances and Laundering of Money and Assets Deriving from Illicit Activities", was established on 25 February 2002. Under Act No. 285, the functions of this Commission are aimed, in general, at preventing the illicit activities described in this Act from being committed in Nicaragua.

These legal provisions help to regulate the prevention and suppression of the financing of terrorist acts. The Superintendency of Banks and Other Financial Institutions, for its part, has instructed banks and financial institutions to refer to the "Guide for Financial Institutions in Detecting Terrorist Financing", prepared by the Financial Action Task Force on Money Laundering (FATF).

As for prevention of the financing of terrorist acts, the Financial Analysis Commission provided an inter-agency response to Nicaragua's Self-Assessment Questionnaire on the eight FATF Special Recommendations on Terrorist Financing. It should be noted, however, that Act No. 285 does not assign it specific functions in this regard. There is now a draft law that would supersede Act. No. 285 and incorporates new elements concerning the Commission.

We have been informed that the main tasks that the Commission has carried out have been related to the problem of money-laundering, in close coordination with the Executive Secretariat of the National Anti-Drug Council, to which this Commission is attached. For example, it submitted an inter-agency response to Nicaragua's Self-Assessment Questionnaire on the prevention and control of money-laundering, on the basis of the 40 FATF recommendations, 19 FATF recommendations and 25 FATF criteria for identifying non-cooperative countries or territories. This Superintendency also keeps the Commission duly informed of reports of suspicious or significant operations received from the entities under its supervision.

The laws and other regulations do not expressly establish which Nicaraguan authorities are responsible for issuing the lists of persons and entities potentially linked to terrorism or the procedure leading to the inclusion or deletion of names. Since the creation of the National Committee for the Implementation of the Central American Plan for Comprehensive Cooperation to Prevent and Combat Terrorism and Related Activities, however, the following procedure has been in place:

- The Ministry of Foreign Affairs has received these lists through official channels (embassies or multilateral organizations) and has forwarded them to the competent local authorities, including the Superintendency of Banks and Other Financial Institutions;
- The Superintendency, on the basis of article 3, paragraph 12, and article 19, paragraph 1, of Act No. 316, immediately transmitted all the lists it received to the institutions under its supervision, with instructions to report any operation carried out with any of the persons or entities contained in those lists;
- In the event of any report to this effect — which has not occurred — the Superintendency will contact the Office of the Attorney-General of the Republic to institute the relevant procedure under the law.

In October 2001 Nicaragua signed the 1999 United Nations Convention for the Suppression of the Financing of Terrorism. The Nicaraguan Parliament (National Assembly) ratified that Convention by means of Legislative Decree No. 3287, which was published in Official Gazette No. 92 of 20 May 2002. In addition, by means of Decree No. 62-2002, published in Official Gazette No. 121 of 28 June 2002, the President of the Republic ratified the United Nations Convention against Transnational Organized Crime, which was approved by the Nicaraguan National Assembly by means of Legislative Decree No. 3246, published in Official Gazette No. 38 of 25 February 2002.

Nicaragua is also a member of the Caribbean Financial Action Task Force (CFATF) and, in that connection, pursuant to Security Council resolution 1373 (2001), the Financial Analysis Commission in September 2002 provided replies to the self-assessment questionnaire on the eight recommendations of the Financial Action Task Force on the financing of terrorism; these replies reflect the situation of Nicaragua with regard to that issue. The Ministry of the Interior is familiar with the document in question, having been apprised of it by the Secretariat of the National Council against Drugs, which has been working in close collaboration with the Financial Analysis Commission.

Also, the National Assembly has drawn up a new draft Penal Code, which could include elements relating to terrorist activities and their financing; we are

forwarding the international regulations to the Assembly for their incorporation where appropriate.

In Title XI, Chapters I and II, articles 493, 499 and 500 of the Penal Code, terrorist acts are classified as offences against public order. Individuals involved in the financing of terrorism could be classed as "promoters", "instigators" or "essential cooperators" and terrorist organizations are covered by the concept of criminal conspiracy. In addition, terrorist organizations can be found under the concept of "Association to commit an offence" established in the same Code. Article 546 of Title XIII, Chapter II, of the Penal Code concerning offences compromising the peace of the Republic should also be mentioned in this context.